No. 17-5639	
Title:	**Adaucto Chavez-Meza, Petitioner** **v.** **United States**
Docketed:	August 17, 2017
Linked with 17A45	
Lower Ct:	United States Court of Appeals for the Tenth Circuit
Case Numbers:	(16-2062)
Decision Date:	April 14, 2017
Questions Presented	

DATE	PROCEEDINGS AND ORDERS
Jul 01 2017	Application (17A45) to extend the time to file a petition for a writ of certiorari from July 13, 2017 to August 14, 2017, submitted to Justice Sotomayor.
Jul 10 2017	Application (17A45) granted by Justice Sotomayor extending the time to file until August 14, 2017.
Aug 14 2017	Petition for a writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due September 18, 2017)
Sep 15 2017	Order extending time to file response to petition to and including October 18, 2017.
Sep 26 2017	Order further extending time to file response to petition to and including November 17, 2017.
Nov 17 2017	Brief of respondent United States in opposition filed. **Proof of Service** **Main Document**
Dec 01 2017	Reply of petitioner Adaucto Chavez-Meza filed. **Main Document** **Proof of Service**
Dec 07 2017	DISTRIBUTED for Conference of 1/5/2018.
Jan 08 2018	DISTRIBUTED for Conference of 1/12/2018.

Jan 12 2018	Motion to proceed in forma pauperis and petition for a writ of certiorari GRANTED. Justice Gorsuch took no part in the consideration or decision of this petition.
Jan 16 2018	Motion to appoint counsel filed by petitioner Adaucto Chavez-Meza. **Main Document** **Proof of Service**
Feb 14 2018	DISTRIBUTED for Conference of 3/2/2018.
Feb 23 2018	SET FOR ARGUMENT on Monday, April 23, 2018.
Feb 26 2018	Brief of petitioner Adaucto Chavez-Meza filed (to be corrected and reprinted).
Feb 26 2018	Brief of petitioner Adaucto Chavez-Meza filed (Corrected brief received 3/26/18). (Distributed) **Main Document** **Certificate of Word Count** **Proof of Service**
Feb 26 2018	Joint appendix (Volume 1) filed. **Main Document** **Proof of Service**
Feb 26 2018	Motion for leave to file Volume II of the joint appendix under seal filed by petitioner Adaucto Chavez-Meza. **Main Document** **Proof of Service**
Feb 27 2018	Blanket Consent filed by Petitioner, Adaucto Chavez-Meza **Blanket Consent**
Mar 05 2018	Motion to appoint counsel filed by petitioner GRANTED, and Todd A. Coberly, Esquire, of Santa Fe, New Mexico, is appointed to serve as counsel for the petitioner in this case. Justice Gorsuch took no part in the consideration or decision of this motion.
Mar 05 2018	Brief amicus curiae of Center on the Administration of Criminal Law filed. **Main Document** **Certificate of Word Count** **Proof of Service**
Mar 05 2018	Brief amici curiae of National Association of Criminal Defense Lawyers and National Association of Federal Defenders filed. (Distributed) **Main Document** **Certificate of Word Count** **Proof of Service**
Mar 07 2018	CIRCULATED
Mar 07 2018	DISTRIBUTED for Conference of 3/23/2018.
Mar 26 2018	Motion for leave to file Volume II of the joint appendix under seal GRANTED. Justice Gorsuch took no part in the consideration or decision of this motion.

Mar 26 2018	Brief of Adaucto Chavez-Meza submitted. **Main Document** **Other** **Certificate of Word Count** **Proof of Service**

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RECORD
AND
BRIEFS

No._____

In The Supreme Court of the United States

Adaucto Chavez-Meza, Petitioner,

v.

United States of America, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

When a district court decides not to grant a proportional sentence reduction under 18 U.S.C. § 3582(c)(2), must it provide some explanation for its decision when the reasons are not otherwise apparent from the record, as the United States Courts of Appeals for the Sixth, Eighth, Ninth, and Eleventh Circuits have held, or can it issue its decision without any explanation whatsoever so long as it is issued on a pre-printed form order containing boilerplate language providing that the court has "tak[en] into account the policy statement set forth at U.S.S.G. § 1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable," as the Courts of Appeals for the Fourth, Fifth, and Tenth Circuits have held?

INTERESTED PARTIES

There are no parties to the proceeding other than those listed in the caption. The Petitioner is Adaucto Chavez-Meza, an inmate currently in the custody of the United States Bureau of Prisons. The Respondent is the United States of America.

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The opinion of the United States Court of Appeals for the Tenth Circuit, Pet. App. at 1a–13a, is available at 854 F.3d 655. The public portion of the district court's unpublished order on Petitioner's request for a sentence reduction is at Pet. App. 1b.[1]

JURISDICTIONAL STATEMENT

The Supreme Court has jurisdiction over this matter under 28 U.S.C. § 1254(1). Petitioner seeks review of an opinion and judgment of the United States Court of Appeals for the Tenth Circuit entered on April 14, 2017, affirming, on direct review, the district court's order modifying his sentence pursuant to 18 U.S.C. § 3582(c)(2). On July 10, 2017, Justice Sonya Sotomayor approved Petitioner's application for an extension of time within which to file a petition for a writ of certiorari, extending the time to and including August 14, 2017.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3582(c): "The court may not modify a term of imprisonment once it has been imposed except that . . . (2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C.

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[1] The second page of the order was filed under seal. As set forth in the opinion below, (Pet. App. at 9a-10a), that page simply indicates the recalculated guidelines range and does not contain any of the district court's reasoning.

§ 994(*o*), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission."

STATEMENT OF THE CASE

This case presents a clear and deep circuit split on the issue of whether a district court must provide any reasoning when it reduces a prisoner's sentence pursuant to an amendment to the Sentencing Guidelines made retroactive by the United States Sentencing Commission, when the new sentence is not proportional to where the prior sentence fell within the guidelines range. Siding with the minority on this issue, the Tenth Circuit held below that a district court need not provide any explanation so long as it checked the box on a form order stating that it had considered the appropriate factors. Petitioner Adaucto Chavez-Meza respectfully requests that the Court issue a writ of certiorari so that may resolve this issue—an issue that likely will present itself in scores of hundreds of cases in the future.

Mr. Chavez-Meza pleaded guilty without the benefit of a plea agreement to a two-count indictment charging him with Conspiracy and Possession with Intent to Distribute 500 Grams and More of a Mixture and Substance Containing a

Detectable Amount of Methamphetamine, in violation of 21 U.S.C. §§ 841(b)(1)(a) and 846. (Pet. App. at 3a.) The United States Probation & Parole Office ("Probation") attributed 1,658.3 grams (actual) of methamphetamine to Mr. Chavez-Meza. Under the Sentencing Guidelines in place at the time of his original sentencing, Probation calculated Mr. Chavez-Meza's base offense level as 38. Mr. Chavez-Meza received a 2-point reduction pursuant to the "safety valve" provision found at U.S.S.G. § 2D1.1(b)(16) and a 3-point reduction for acceptance of responsibility pursuant to U.S.S.G. §§ 3E1.1(a) & (b), for a total offense level of 33. With no criminal history points, Mr. Chavez-Meza's criminal history category was I. This resulted in a guidelines sentencing range of 135 to 168 months. (*See* Pet. App. at 3a.)

At Mr. Chavez-Meza's original sentencing hearing, the district court explained that "the reason the guideline sentence is high in this case . . . is because of the quantity" of methamphetamine (*Id.* (internal quotation marks omitted).) The district court sentenced Mr. Chavez-Meza at the low-end of the Guidelines, i.e., to a term of imprisonment of 135 months. (*Id.*)

In 2015, Mr. Chavez-Meza moved the district court under 18 U.S.C. § 3582(c)(2) to reduce his sentence pursuant to Amendment 782 to the Sentencing Guidelines, which reduced the applicable guidelines ranges for certain drug offenses. (Pet. App. 3a.) The district court appointed undersigned counsel to

represent Mr. Chavez-Meza (pursuant to the Criminal Justice Act). (*Id.*) On July 17, 2015, Probation submitted a memorandum in which it determined that, under Amendment 782, Mr. Chavez-Meza's new guidelines range was 108 to 135 months. The memorandum noted that Mr. Chavez-Meza had "completed education courses related to masonry, construction, and healthy lifestyle," was "currently enrolled in GED courses twice weekly," and was "trying to enroll in a non-residential drug treatment program." Probation also noted that Mr. Chavez-Meza had received one disciplinary sanction for using another inmate's phone number.

On August 10, 2015, Mr. Chavez-Meza and the government filed a stipulation in which they agreed that Amendment 782 resulted in a lower sentencing range for Mr. Chavez-Meza. (Pet. App. at 3a.) Mr. Chavez-Meza requested a proportional reduction to the low end of his amended sentencing range, i.e., 108 months. (*Id.*) The government did not take a position on a specific sentence, but agreed that the one disciplinary action did not disqualify Mr. Chavez-Meza from receiving a sentence reduction.

On April 5, 2016, the district court entered an order on an "AO-247" form, reducing Mr. Chavez-Meza's sentence to 114 months. (Pet. App. at 1b.) The district court did not provide any reasons or explanation for its decision to reduce Mr. Chavez-Meza's sentence only to 114 months, and not to 108 months as

requested by Mr. Chavez-Meza. The form order simply contained the following boilerplate language:

> [H]aving considered [the defendant's] motion, and taking into account the policy statement set forth at USSG § 1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,
>
> **IT IS ORDERED** that the motion is . . . GRANTED and the defendant's previously imposed sentence of imprisonment . . . of 135 months is **reduced to** 114 months.

(*Id.*)

Mr. Chavez-Meza timely appealed the district court's order to the U.S. Court of Appeals for the Tenth Circuit. (Pet. App. at 2a.) That court's appellate jurisdiction arose under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). The sole issue Mr. Chavez-Meza raised on appeal was whether the district court erred in failing to provide any reasons for its decision to reduce Mr. Chavez-Meza's sentence to 114 months, instead of the requested 108 months. (*See* Pet. App. at 2a.)

On April 14, 2017, the Tenth Circuit issued an opinion affirming the district court. (*Id.* at 1a.) The Tenth Circuit ruled that the "explanatory requirement" contained within 18 U.S.C. § 3553(c) does not apply to sentence modification proceedings under § 3582(c)(2). (Pet. App. at 5a–6a.) The Tenth Circuit further ruled that any need for explanation under § 3582(c)(2) cannot be any greater than the need for explanation under § 3553(c). (Pet. App. at 6a–7a.) Because § 3553(c) "do[es] not require extensive explanations for sentences within the guidelines

range," (Pet. App. at 7a), the Tenth Circuit held that, "absent any indication the court failed to consider the § 3553(a) factors, a district court completing form AO-247 need not explain choosing a particular guidelines-range sentence." (Pet. App. at 8a–9a.)

The Tenth Circuit recognized that "[t]he circuits are split on the degree of explanation necessary to satisfy § 3582[,]" and acknowledged that its decision conflicted with those of multiple other circuits. (Pet. App. at 10a.) Nonetheless, while stating that it "might be a good practice for the district courts" to explain the reasons for their decisions in sentence modification decisions, and that "reviewing courts might benefit in some circumstances from additional explanation," it held that they are not required to provide any such explanation. (*Id.* at 13a.)

REASONS FOR GRANTING THE PETITION

I. The Courts of Appeals Are Divided over Whether District Courts Must Explain Their Decisions When Non-Proportionally Reducing a Sentence Pursuant to § 3582(c)(2).

As the Tenth Circuit recognized, circuit courts are split over whether district courts must explain their decisions when ruling on motions under § 3582(c)(2). (Pet. App. at 10a ("[T]he circuits are split on the degree of explanation necessary to satisfy § 3582.").) Where a district court reduces a sentence by a non-proportional amount, the, Sixth, Eighth, Ninth, and Eleventh Circuits hold that

district courts must provide some explanation of their decisions. The Fourth, Fifth, and Tenth Circuits hold that no such explanation is necessary.[2]

A. The, Sixth, Eighth, Ninth, and Eleventh Circuits Require Sufficient Explanation to Enable Appellate Review.

Contrary to the decision below, the Sixth, Eighth, and Eleventh Circuits have held in published decisions that, in order to enable appellate review, district courts must provide some explanation when they grant a § 3582(c)(2) motion, but decline to grant a fully-proportional sentence reduction. In *United States v. Howard,* 644 F.3d 455 (6th Cir. 2011), the defendant initially was sentenced to a bottom of the guidelines sentencing range of 97 months. *Id.* at 457. After the crack cocaine amendments to the Guidelines, the defendant's new sentence range was 78 to 97 months. *Id.* The district court, upon the defendant's § 3582(c)(2) motion,

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[2] The First and Third Circuits have addressed related questions but not the precise issue presented here. The First Circuit has held that where the reasons for granting a non-proportional sentence reduction are apparent from the record, no further explanation is necessary. *United States v. Zayas-Ortiz*, 808 F.3d 520 (1st Cir. 2015) ("[T]he record as a whole is sufficient for us to infer the pertinent factors taken into account by the court below."). Similarly, the Third Circuit has held that no additional explanation is necessary where the § 3582(c)(2) motion is granted and the sentence is decreased proportionally to the original sentence. *United States v. Patton*, 644 F. App'x 125, 127 (3d Cir. 2016) ("Given the limited nature of § 3582(c)(2) relief and the fact that the District Court reduced Patton's sentence proportionally, we discern no error by the District Court in failing to issue an opinion concerning Patton's modified sentence."). Mr. Chavez-Meza's petition is limited to the question of whether district courts must provide explanations when the reasons for the decision are not apparent from the record and the sentence is not reduced in a proportional manner. The First and Third circuits do not answer that precise question.

resentenced the defendant to a term of 88 months. *Id.* As in the case below, the district court merely checked a box on a form order noting that it took "into account the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent they are applicable." *Id.* at 461 (internal quotation marks omitted). The Sixth Circuit reversed because the district court "neither stated which of the § 3553(a) factors were applicable nor added any explanation for its decision in the space provided for 'additional comments.'" *Id.*

Likewise, in *United States v. Burrell*, 622 F.3d 961 (8th Cir. 2010), the Eight Circuit reversed a district court's § 3582(c)(2) sentence reduction order where the amended sentence (151 months) was at the top of the amended guidelines range (121–151 months), the defendant's original sentence (168 months) was in the middle of the guidelines range (151–188 months), and the district court did not provide any reasoning in its order. *See id.* at 962–63. The Eight Circuit did so because "the record [did] not allow [it] to discern how the district court exercised its discretion." *Id.* at 964. The same occurred in *United States v. Williams*, 557 F.3d 1254 (11th Cir. 2009), where the district court imposed an amended sentence at the high end of the Guidelines even though the defendant's original sentence was near the low end of the Guidelines. *See id* at 1255. The Eleventh Circuit reversed because the district court failed to provide any reasoning in its summary order. *Id.* at 1257.

The Ninth Circuit has gone further than other circuits in the degree of explanation required in § 3582(c)(2) proceedings. In *United States v. Trujillo*, 713 F.3d 1003 (9th Cir. 2013), the Ninth Circuit reversed a district court's order denying a sentence reduction because the district court failed to explain its reasons for rejecting all of the defendant's non-frivolous arguments in support of the sentence reduction. *Id.* at 1011. Although *Trujillo* involved a straight denial of a § 3582(c)(2) motion, it has since extended its broad rule to situations where, as here, the district court imposes a non-proportionally reduced sentence. *See United States v. Gallegos-Raymundo*, --- F. App'x ---, 2017 WL 2198159 (9th Cir. May 18, 2017). The Ninth Circuit's rule, however, is predicated on this Court's holding in *Rita v. United States*, 551 U.S. 338 (2007), regarding what district courts are obliged to do at original sentencings. *See Trujillo*, 713 F.3d at 1009-11. Because this Court has emphasize that § 3582(c)(2) proceedings are limited in scope and not full resentencing proceedings, *Dillon v. United States*, 560 U.S. 817, 827-28 (2010), Mr. Chavez-Meza does not seeking a rule as broad as that set forth by the Ninth Circuit.[3]

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[3] The Second and the Seventh Circuits do not appear to have addressed the precise question presented here, i.e, whether district courts are obligated to provide some explanation when partially denying sentence reduction motions. Both circuits, however, have held in published decisions that when denying § 3582(c)(2) motions district courts must provide sufficient explanation so as to enable appellate review. *See United States v. Christie*, 736 F.3d 191, 196 (2nd Cir. 2013) (holding that reversal is required when "the reasons for the district court's exercise of

B. The Tenth Circuit Joined the Fourth and Fifth Circuits in Not Requiring District Courts to Provide Any Explanation When Reducing a Sentence Non-Proportionally Pursuant to § 3582(c)(2).

In ruling that the district court below did not err when it failed to provide any explanation for its decision, the Tenth Circuit joined the Fourth and Fifth Circuits. In *United States v. Smalls*, 720 F.3d 193 (4th Cir. 2013), the Fourth Circuit considered an appeal of an order imposing a proportional sentence reduction pursuant to § 3582(c)(2).The district court had issued its decision on a form order, merely stating: "In granting this motion, the court has considered the factors set forth in 18 U.S.C. § 3553(a)." *Id.* at 195. Contrary to the defendant's argument that it was necessary for the district court to provide individualized reasoning, the Fourth Circuit held that no explanation was required absent any evidence the district court "neglected to consider relevant factors." *Id.* at 196. Although *Smalls* involved a proportional sentence reduction, the Fourth Circuit has summarily applied that decision to cases in which the defendants failed to receive

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discretion are not apparent from the record"); *United States v. Marion*, 590 F.3d 475, 478 (7th Cir. 2009) (reversing because boilerplate language on AO-247 form showed "only that the district court exercised its discretion rather than showing *how* it exercised its discretion"). This reasoning supports the rule of the Sixth, Eighth, Ninth, and Eleventh Circuits and it is likely that the Second and Seventh Circuits would follow in their footsteps when presented with the precise question set forth in this petition. *Cf. United States v. Brodsky*, 675 F. App'x 59, 62-63 (2d Cir. 2017) (affirming non-proportional sentence reduction where district "court explained that its decision was based on the dangerousness of Williams's criminal conduct, his lack of remorse at sentencing, and his significant risk of re-offending").

proportional sentence reductions. *See, e.g.*, *United States v. Locklair*, 668 F. App'x 477, 477–78 (4th Cir. 2016) (mem.) (affirming district court's order reducing sentence by twelve months instead of proportional reduction of forty one months); *United States v. Johnson*, 641 F. App'x 280, 281 (4th Cir. 2016) (mem.) (affirming district court's order reducing sentence by six months instead of proportional reduction of fourteen months).

Like the Fourth Circuit in *Smalls*, the Fifth Circuit has also imposed a blanket rule allowing district courts to exercise unreviewable discretion when imposing a non-proportional sentence reduction pursuant to § 3582(c)(2). In *United States v. Washington*, 375 F. App'x 390 (5th Cir. 2010), the defendant "argue[d] that the district court abused its discretion in failing to sentence him towards the lower end of the guidelines range, as it did at his original sentencing." *Id.* at 390. Relying on *United States v. Evans*, 587 F.3d 667 (5th Cir. 2009),[4] the Fifth Circuit held that, because "[t]he district court was under no obligation to reduce the sentence at all, . . . it had no obligation to impose any particular sentence within the recalculated guidelines range." *Washington*, 375 F App'x at 390. Simply because the district court reduced the defendant's sentence, the Fifth

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[4] In *Evans*, the Fifth Circuit relied on the earlier case of *United States v. Cox*, 317 F. App'x 401 (5th Cir. 2009), when stating: "If a defendant cannot successfully challenge a district court for failing to provide reasons for *denying* his motion to reduce his sentence, it is axiomatic that he cannot do so for *granting* his motion but not providing a satisfactorily low enough sentence within the recalculated range." *Evans*, 587 F.3d at 674.

Circuit assumed the district court appropriately considered the § 3553(a) factors. *Id.*

In holding that the district court below made no error when it neglected to provide any reasons when it reduced Mr. Chavez-Meza's sentence to 114 months, instead of to 108 months—which would have been proportional to his original sentence—the Tenth Circuit aligned itself with the Fourth and Fifth Circuits. The decision below, thus, further deepened a circuit split requiring this Court's resolution.

II. The Question Presented is Important and Recurring.

Although it is fair to say that the vast majority of sentence reductions pursuant to Amendment 782 have been finalized, the ongoing circuit split is important because it undoubtedly will reoccur in thousands of cases in the future. One of the United States Sentencing Commission's basic objectives is to assure that the Sentencing Guidelines adequately meet the purposes of sentencing as set forth in § 3553(a). *Rita*, 551 U.S. at 347. The Commission's work is ongoing, and it regularly refines and updates the Guidelines, basing its amendments on its study of thousands of sentences imposed yearly, as well as advice from "prosecutors, defenders, law enforcement groups, civil liberties associations, experts in penology, and others." *Id.* at 350; *see also* 28 U.S.C. § 994(*o*).

18 U.S.C. § 3582(c)(2) furthers Congress's goals of uniformity and proportionality in sentencing by enabling individuals already sentenced to request modifications based on amendments that the Commission chooses to make retroactive. *See generally* U.S.S.G. § 1B1.10. Between 2008 and 2016, the federal courts have conducted over 50,000 resentencing proceedings based on retroactive guidelines amendments under 18 U.S.C. § 3582(c)(2)—far more than any other type of sentencing-modification proceeding.[5]

As the Sentencing Commission continues to refine and amend the Guidelines, it undoubtedly will make additional amendments retroactive, resulting

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[5] United States Sentencing Commission, Annual Report and Sourcebook of Federal Sentencing Statistics (2008–2016), *available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2016/Table62.pdf (2016); https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2015/Table62.pdf (2015); https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2014/Table62.pdf (2014); https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2013/Table62.pdf (2013); https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2012/Table62_0.pdf (2012); https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2011/Table62_0.pdf (2011); https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2010/Table62_0.pdf (2010); https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2009/Table62_0.pdf (2009); https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2008/Table62_0.pdf (2008).

in thousands of future sentence modifications pursuant to § 3582(c)(2).[6] These types of sentence-modification proceedings are "limited" in nature. *Dillon*, 560 U.S. at 828. Nevertheless, given their sheer number, the issues presented in this petition are likely to recur with significant frequency. In order to enable effective, uniform appellate review of these proceedings, it is necessary for this Court to provide clear guidance to lower courts.

III. This Case Presents an Ideal Vehicle for Addressing the Question Presented.

This case presents a clean vehicle to resolve the narrow question presented. The precise issue raised in this petition is whether, in a § 3582(c)(2) proceeding, a district court must provide some explanation for its decision to impose a non-proportional sentence where the record does not otherwise indicate the reason for the district court's decision, so as to enable effective appellate review.

This was the sole issue Mr. Chavez-Meza raised on appeal, and the Tenth Circuit's decision effectively forecloses appellate review of sentence reduction proceedings so long as the district court checks a box on a form order indicating that it considered the § 3553(a) factors. The district court had initially sentenced Mr. Chavez-Meza to a bottom-of-the-guidelines sentence of 135 months. The district court rejected Mr. Chavez-Meza's request for a proportionally reduced

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[6] Since promulgation of the Sentencing Guidelines, the Sentencing Commission has made nearly thirty amendments retroactive. *See* U.S.S.G. § 1B1.10(d).

sentence of 108 months. Instead, without providing any explanation, the district court reduced Mr. Chavez-Meza's sentence only to 114 months. The district court's decision was not apparent from the record. Probation prepared a memorandum discussing Mr. Chavez-Meza's positive achievements in prison and disclosing one disciplinary infraction for using another inmate's telephone number. The government, however, did not provide any recommendation to the district court, or argue for or against any specific sentence. The impact of this post-sentence behavior on Mr. Chavez-Meza's modified sentence, if any, was, thus, not obvious. *See, e.g.*, *Zayas-Ortiz*, 808 F.3d at 524 (1st Cir. 2015) (holding that "the record as a whole is sufficient for us to infer the pertinent factors taken into account" because the government made specific arguments about public safety concerns and the defendant's specific conduct, and the government's recommendation was echoed by Probation).

Finally, this issue has now been addressed by a majority of the circuits and the resulting circuit split is mature. The circuits fall into two distinct camps. One group of circuits requires district courts to provide sufficient information about their choice of sentence to enable effective appellate review. The other has declined to require the district court to provide any sort of explanation absent an indication that the district court failed to consider the appropriate factors. The remaining circuits are unlikely to provide additional insight into the question.

IV. The Ruling Below Is Incorrect Because It Shields Sentence Reduction Rulings from Appellate Review.

This Court has held, in multiple contexts, that when Congress provides criteria to guide discretionary decisions, the courts making those decisions must provide adequate explanation in order to enable effective appellate review. For example, in *United States v. Taylor*, 487 U.S. 326 (1988), this Court held that a district court abused its discretion in dismissing an indictment with prejudice where it failed to analyze adequately the issue within the confines of the Speedy Trial Act. *Id.* at 342-43. As held by the Court, "[w]here . . . Congress has declared that a decision will be governed by consideration of particular factors, a district court must carefully consider those factors as applied to the particular case and, whatever its decision, clearly articulate their effect in order to permit meaningful appellate review." *Id.* at 336-37. Indeed, "a decision calling for the exercise of judicial discretion 'hardly means that it is unfettered by meaningful standards or shielded from thorough appellate review.'" *Id.* at 336 (quoting *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 416 (1975)). Similarly, the Court in *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542 (2010), reversed the Eleventh Circuit's affirmance of a district court's discretionary award of attorneys' fees pursuant to 42 U.S.C. § 1988. *Perdue*, 559 U.S. at 559. It did so because the district court did not provide proper justification for the award. *See id.* at 557. While recognizing that a fee award is committed to a trial judge's sound discretion, the Court held that "the

judge's discretion is not unlimited. It is essential that the judge provide a reasonably specific explanation for all aspects of a fee determination . . . . Unless such an explanation is given, adequate appellate review is not feasible . . . ." *Id.* at 558; *see also, e.g., Gall v. United States*, 552 U.S. 38, 68 (2007) (Alito, J., dissenting) ("Appellate review for abuse of discretion is not an empty formality.").

Section 3582(c)(2) requires district courts to consider the § 3553(a) factors when deciding whether to reduce a sentence pursuant to an amendment that the Sentencing Commission has made retroactive. And, while § 3582(c), unlike § 3553(c), does not expressly provide that the district court must state its reasons for imposing a particular sentence, neither do the statutes at issue in *Taylor* or *Perdue* impose a "duty of explanation." (Pet. App. at 6a); *see* 18 U.S.C. § 3162(a); 42 U.S.C. § 1988(b). Instead, it is well understood that these types of decisions are reviewed for abuse of discretion. *See Perdue*, 559 U.S. at 563 ("[T]he function of appellate courts is to review [§ 1988 fee awards] for an abuse of . . . discretion."); *Taylor*, 487 U.S. at 335 ("Consistent with the prevailing view, the Court of Appeals stated that it would review the dismissal with prejudice under an abuse-of-discretion standard.") (citing cases); *see also Burrell*, 622 F.3d at 964 ("We review a district court's decision under § 3582(c)(2) to reduce a sentence and the extent of any reduction for an abuse of discretion."). Thus, contrary to the Tenth Circuit's assertion that the need for some explanation when deciding to impose a non-

proportional sentence reduction pursuant to § 3582(c)(2) stemmed from § 3553(c), such a requirement is inherently present whenever district courts exercise their discretion within bounds set by Congress.

District courts follow a two-step process when acting on § 3582(c)(2) sentence modification motions. First, they determine whether the defendant is legally eligible for a sentence modification under U.S.S.G. § 1B1.10. If so, the district court then weighs the § 3553(a) factors and determines whether a sentence reduction is warranted. *Dillon*, 560 U.S. at 826–27.

At the second step of the process (which is the step at issue in this case), Congress has constrained the district court's discretion by requiring it to consider the § 3553(a) factors. In addition, § 3582(a) constrains the district court's discretion by precluding it from imposing a prison term in order to promote the defendant's rehabilitation. *See Tapia v. United States*, 564 U.S. 319, 332 (2011). The Sentencing Guidelines, which are still binding on district courts in § 3582(c)(2) proceedings, *see Dillon*, 560 U.S. at 829–30, provide yet another constraint by directing the district court not to consider race, sex, national origin, creed, religion, or socio-economic status in determining the sentence. *See* U.S.S.G. § 5H1.10.

The Tenth Circuit's rule, along with that of the Fourth and the Fifth Circuits, makes it impossible for an appellate court to determine whether the district court

properly exercised its discretion within the bounds prescribed by Congress. Appellate courts "ordinarily will not be able to determine whether the district court's exercise of discretion was reasonable without an indication of the reason the discretion was exercised as it was." *Christie,* 736 F.3d at 196. A district court simply checking the box next to the boilerplate language contained within the AO-247 form fails to provide any sort of basis for appellate review. While the boilerplate language may show "that the district court exercised its discretion, it does not show *how* it exercised that discretion." *Marion*, 590 F.3d at 477–78. It does not show which factors the district court found applicable, and it provides no help in assuring that the district court avoided taking into consideration impermissible factors.

The Sixth, Eighth, and Eleventh Circuits, by contrast, sensibly require basic explanations from district courts to enable appellate review, consistent with the bedrock principles articulated in *Taylor* and *Perdue*. The explanation these circuits call for is reasonably tailored to the need. *See, e.g., Howard*, 644 F.3d at 460. They simply require sufficient explanation so that appellate courts can determine if the district court properly exercised its discretion. *See Burrell*, 622 F.3d at 964. This requirement is essential to ensuring that district courts in § 3582(c)(2) proceedings district courts exercise their discretion within the bounds set by Congress.

CONCLUSION

For the foregoing reasons, Petitioner Adaucto Chavez-Meza respectfully requests that the Court grant a writ of certiorari to the United States Court of Appeals for the Tenth Circuit.

Respectfully submitted,

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No._____

In The Supreme Court of the United States

Adaucto Chavez-Meza, Petitioner,

v.

United States of America, Respondent.

CERTIFICATE OF SERVICE

I, Todd A. Coberly, an attorney appointed under the Criminal Justice Act of 1964, *see* 18 U.S.C. § 3006A, hereby certify pursuant to Sup. Ct. R. 29 that on this 14th day of August, 2017, a copy of the Motion for Leave to Proceed in Forma Pauperis and Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit were mail, postage-prepaid, to the Solicitor General of the United States, United States Department of Justice, 950 Pennsylvania Avenue, NW, Room 5614, Washington, DC 20530-0001, counsel for the Respondent.

Respectfully submitted,

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Attorney for Petitioner

No. 17-5639

IN THE SUPREME COURT OF THE UNITED STATES

ADAUCTO CHAVEZ-MEZA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly affirmed a district-court order granting in part petitioner's motion for a reduction of sentence pursuant to 18 U.S.C. 3582(c)(2), where the court of appeals determined that it could ascertain from the record that the district court had considered the relevant sentencing factors and had not abused its discretion in selecting the reduced sentence.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-13a) is reported at 854 F.3d 655. The order of the district court (Pet. App. 1b) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 14, 2017. On July 10, 2017, Justice Sotomayor extended the time within which to file a petition for a writ of certiorari to and including August 14, 2017, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the District of New Mexico, petitioner was convicted of conspiracy to possess and possession with intent to distribute methamphetamine, in violation of 21 U.S.C. 841(b)(1)(A) and 846. Judgment 1. He was sentenced to 135 months of imprisonment, to be followed by five years of supervised release. Id. at 2-3. After the Sentencing Commission (Commission) amended certain Sentencing Guidelines provisions for drug offenses, petitioner filed a motion under 18 U.S.C. 3582(c)(2) to reduce his term of imprisonment to 108 months. Pet. App. 3a. The district court granted the motion in part, reducing petitioner's term of imprisonment to 114 months. Id. at 4a. The court of appeals affirmed. Id. at 4a-13a.

1. Section 3553 of Title 18 of the United States Code prescribes procedures for a federal court to impose a criminal sentence. Section 3553(a) directs the sentencing court to "consider" an array of factors concerning the defendant and the offense, including the applicable Sentencing Guidelines. 18 U.S.C. 3553(a). The court must then "impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in" Section 3553(a)(2), such as "provid[ing] just punishment," "afford[ing] adequate deterrence to criminal conduct," and "protect[ing] the public from further crimes of the defendant," among others. Ibid.

Section 3553(c) requires the sentencing court, "at the time of sentencing, [to] state in open court the reasons for its imposition of the particular sentence." 18 U.S.C. 3553(c). For within-Guidelines sentences of 24 months or more, the court must state "the reason for imposing a sentence at a particular point within the range." 18 U.S.C. 3553(c)(1). For sentences "outside the [Guidelines] range," the court must state -- and must record in writing "with specificity in a statement of reasons form" -- "the specific reason for the imposition of a sentence different from" the recommended Guidelines range. 18 U.S.C. 3553(c)(2). Thus, "[w]here the defendant or prosecutor presents nonfrivolous reasons for imposing a different sentence" than the Guidelines recommend, "the judge will normally * * * explain why he has rejected those arguments." Rita v. United States, 551 U.S. 338, 357 (2007).

A court generally "may not modify a term of imprisonment once it has been imposed." 18 U.S.C. 3582(c); see Dillon v. United States, 560 U.S. 817, 819 (2010). As relevant here, however, the court "may reduce" a defendant's sentence "in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o)." 18 U.S.C. 3582(c)(2). Section 3582(c)(2) "does not authorize a sentencing or resentencing proceeding." Dillon, 560 U.S. at 825. "Instead,

it provides for the 'modification of a term of imprisonment' by giving courts the power to 'reduce' an otherwise final sentence" in light of a retroactive change in the applicable Guidelines. Ibid. (brackets omitted). Section 3582(c)(2) permits a court to "reduce the term of imprisonment, after considering" the statutory sentencing factors set out in Section 3553(a), only "if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. 3582(c)(2).

2. a. For more than one year, petitioner and two co-conspirators were engaged in distributing methamphetamine in Albuquerque, New Mexico. Presentence Investigation Report (PSR) ¶¶ 12, 15. Petitioner and his co-conspirators were associated with the Sinaloa Drug Cartel in Phoenix, Arizona. PSR ¶ 15. They typically would obtain methamphetamine from a Sinaloa distributor in Phoenix and transport it to Albuquerque, where they would sell it, but on some occasions they transported methamphetamine to other parts of the western and midwestern United States. PSR ¶¶ 12, 15.

In 2012, petitioner and his co-conspirators were arrested in a sting operation, during which they had attempted to sell approximately four pounds of methamphetamine to an undercover Federal Bureau of Investigations employee for $58,000. PSR ¶¶ 6-8, 24. Forensic testing of the drugs seized in the sting revealed a net weight of 1,759.5 grams of methamphetamine (1,658.3 grams of methamphetamine (actual)). PSR ¶ 8; 3 C.A. ROA 1.

b. Petitioner was charged with possessing 500 or more grams of a substance containing a detectable amount of methamphetamine, in violation of 21 U.S.C. 841(b)(1)(A)(viii), and with conspiring to do so, in violation of 21 U.S.C. 846. Indictment 1-2. Petitioner pleaded guilty to both charges without a plea agreement. Judgment 1; PSR ¶ 60.

In 2013, the district court sentenced petitioner. Judgment 1; 4 C.A. ROA 1-14. With a total offense level of 33 and a criminal history category of I, petitioner's advisory range under the Guidelines was 135 to 168 months of imprisonment. PSR ¶ 59; 2 C.A. ROA 20-21; 4 C.A. ROA 11-12. After a hearing, the court imposed a sentence of 135 months of imprisonment, to be followed by five years of supervised release. Judgment 2-3. The court explained that one "reason the guideline sentence is high in this case, even the low end of 135 months, is because of the quantity" of drugs. 4 C.A. ROA 11. Petitioner, the court noted, had "distributed 1.7 kilograms of actual methamphetamine," which was "a significant quantity." Ibid. The court further observed that "one of the other reasons that the penalty is severe in this case, is because of methamphetamine." Ibid. The judge explained that he had "been doing this a long time, and from what [he] gather[ed] and what [he had] seen, methamphetamine, it destroys individual lives, it destroys families, it can destroy communities." Ibid.

Petitioner filed a notice of appeal but later voluntarily dismissed his appeal. D. Ct. Doc. 127, at 1 (July 22, 2013); D. Ct. Doc. 166-1, at 3 (Jan. 21, 2014).

3. In 2014, the Sentencing Commission issued Amendment 782 to the Sentencing Guidelines, which retroactively modified the drug-quantity Guideline and reduced the base offense level for defendants like petitioner by two levels. Pet. App. 2a; see Sentencing Guidelines App. C Supp., Amend. 782, at 63-73 (Nov. 1, 2014); id. Amend. 788, at 85-87 (Nov. 1, 2014). That two-level reduction, in turn, lowered petitioner's advisory Guidelines range to 108 to 135 months of imprisonment. 3 C.A. ROA 2-3; C.A. Supp. ROA 1-2.

In 2015, petitioner filed a motion under 18 U.S.C. 3582(c)(2) to reduce his sentence from 135 months to 108 months based on Amendment 782. D. Ct. Doc. 167, at 1-3 (Mar. 16, 2015). The Probation Office submitted a memorandum to the district court regarding the application of Amendment 782 to petitioner's case. 3 C.A. ROA 2-3. The memorandum noted that, according to a Bureau of Prisons disciplinary report, petitioner had been sanctioned for improperly using another inmate's phone number, and had as a result lost work privileges for 180 days and phone privileges for 30 days. Id. at 3. The memorandum also noted that petitioner completed a drug-abuse program, was trying to enroll in a nonresidential drug-abuse program, and had completed various education courses. Ibid.

The district court appointed counsel for petitioner, and the government and petitioner subsequently stipulated that petitioner was eligible for a reduced sentence within the modified Guidelines range. Pet. App. 3a; D. Ct. Doc. 169, at 1-2 (Aug. 10, 2015). The stipulation noted the Probation Office's statement in its memorandum that petitioner had been sanctioned while incarcerated, but the government agreed that this misconduct "is not disqualifying in considering the 18 U.S.C. § 3553(a) sentencing factors." D. Ct. Doc. 169, at 1. The government did not take a position on the appropriate sentence within the modified Guidelines range. See ibid. Petitioner requested a sentence of 108 months, at the bottom of the modified range, noting that the court had explained in imposing his original sentence that the drug quantity was a driving factor in determining his sentence and that a sentence at the "low end of the guideline range" was appropriate. Id. at 2 (internal quotation marks omitted). Petitioner also noted his completion of various educational courses while incarcerated. Ibid.

The district court issued an order "grant[ing]" petitioner's motion in part, reducing his term of imprisonment to 114 months. Pet. App. 1b (capitalization altered); see C.A. Supp. ROA 1. The court's order was entered on a form issued by the Administrative Office of the United States Courts, Form AO-247. Ibid.; see Pet. App. 4a. In completing the form, the court set forth the

calculation of petitioner's modified Guidelines range, indicated that the reduced sentence "is within the amended guidelines range," C.A. Supp. ROA 2, and certified that it had "tak[en] into account the policy statement set forth at USSG § 1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable." Pet. App. 1b. Petitioner did not seek reconsideration or clarification of the district court's order.

4. The court of appeals affirmed. Pet. App. 1a-13a. The court rejected petitioner's contention that the district court had "fail[ed] to adequately explain how it applied the § 3553(a) factors in imposing a 114-month sentence." Id. at 2a; see id. at 4a-13a. The court of appeals explained that Section 3582(c)(2) requires district courts "'to consider the factors in 18 U.S.C. § 3553(a),'" but it "'does not mention § 3353(c),'" and thus "does not incorporate the explanatory requirement from § 3553(c)" that requires courts in original sentencing proceedings to state in open court the reasons for a sentence. Id. at 5a (quoting United States v. Verdin-Garcia, 824 F.3d 1218, 1221 (10th Cir. 2016), cert. denied, 137 S. Ct. 2263 (2017)). Given the textual differences between Section 3553(a), which "nowhere imposes on the court a duty to address [the Section 3553(a)] factors on the record," and Section 3553(c), which "speaks expressly to the nature of the district court's duty to explain itself on the record," the court determined that "[i]t would be incongruous * * * to read

a duty of explanation into subsection (a) when the exact matter has already been considered and addressed by Congress in subsection (c)." Id. at 6a.

The court of appeals further explained that, in any event, "the requirements imposed on a court at a sentence-reduction proceeding cannot be greater than those imposed at an original sentencing proceeding." Pet. App. 6a. "The original sentencing procedures required by § 3553(c)," the court reasoned, "must therefore supply the ceiling for sentence-reduction procedures." Id. at 7a. And the court observed that "original sentencing proceedings" to which Section 3553(c) does apply "do not require extensive explanations for sentences within the guidelines range," but instead require "'only a general statement noting the appropriate guideline range and how it was calculated,'" which is "'amply fulfill[ed]'" by a "court's 'citation of the presentence report's calculation method and recitation of the suggested imprisonment range.'" Id. at 7a-8a (brackets and citations omitted). The court accordingly reasoned that "the same 'general statement noting the appropriate guideline range and how it was calculated' in applying § 3553(a)" at an original sentencing "also suffices in sentence-reduction proceedings." Id. at 8a.

The court of appeals recognized that "[m]ore is required at sentencing when the defendant requests a below-guidelines sentence." Pet. App. 7a n.1. In such circumstances, an appellate

court "must be able to discern from the record that the sentencing judge did not rest on the guidelines alone, but considered whether the guidelines sentence actually conforms, in the circumstances, to the statutory factors." Id. at 8a n.1 (citation omitted). The court explained, however, that such a "situation is not raised on these facts" because courts ruling on sentence-reduction motions under Section 3582(c)(2) "can only reduce a sentence to a term less than the guidelines minimum if the sentencing court originally imposed a sentence below the guidelines range," ibid., which is not true here, see id. at 2a.

Applying those principles, the court of appeals determined that "[n]othing indicates in this case" that "the district court failed to consider the § 3553(a) factors or otherwise abused its discretion." Pet. App. 9a. The court observed that "[t]he first page" of the district court's order "signed by the judge" -- on a form generated by the Administrative Office of the United States Courts -- "indicates that [the judge] ha[d] 'taken into account the policy statement set forth at USSG § 1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a)." Ibid. (brackets omitted). The court of appeals further observed that "[t]he (sealed) second page" of the order "correctly indicates the amended guidelines range." Id. at 9a-10a. The court of appeals determined that "it is safe to infer from the [district] court's rejection of the low-end-of-the-range sentence that it carefully considered the

materials (which included an incident of misconduct while in prison) presented to it by the parties." Id. at 10a.

The court of appeals acknowledged some disagreement among other circuits "on the degree of explanation necessary to satisfy § 3582." Pet. App. 10a. The court acknowledged "the need for a district court to create a meaningful basis for appellate review and to promote the perception of fairness," but the court "nonetheless" was "persuaded that § 3582 does not require more explanation than was provided here" for the district court's decision granting in part petitioner's motion for a reduced sentence. Id. at 11a, 13a (citation and internal quotation marks omitted). The court expressly reserved judgment on "whether a district court must justify rejecting a sentence-reduction motion," noting that some courts of appeals "have imposed higher explanatory standards" for such decisions. Id. at 9a n.2.

ARGUMENT

Petitioner contends (Pet. 6-19) that the court of appeals erred in affirming the district court's order granting in part petitioner's motion for a sentence reduction and that its decision implicates a disagreement among the courts of appeals concerning the proper interpretation of 18 U.S.C. 3582(c)(2). The decision below, however, correctly determined that the district court acted within its discretion and that in these circumstances Section 3582(c)(2) did not require the court to provide a greater

explanation for the reduced within-Guidelines sentence. That holding is consistent with the statute and this Court's decisions, and it does not conflict with the decisions of other circuits. This Court has recently and repeatedly denied certiorari in cases addressing the degree of explanation required in denying motions for sentence reductions under 18 U.S.C. 3582(c)(2). See Hunnicutt v. United States, 137 S. Ct. 2265 (2017) (No. 16-8003); Hernandez-Espinoza v. United States, 137 S. Ct. 2264 (2017) (No. 16-7869); Verdin-Garcia v. United States, 137 S. Ct. 2263 (2017) (No. 16-6786); Piper v. United States, 137 S. Ct. 2263 (2017) (No. 16-7662). It should follow the same course here.

1. a. The sentence-reduction proceedings established in Section 3582(c)(2) represent a "narrow exception to the rule of finality" that otherwise prohibits the modification of criminal judgments. Dillon v. United States, 560 U.S. 817, 827 (2010). Section 3582(c)(2), this Court has made clear, "does not authorize a sentencing or resentencing proceeding," but merely provides a mechanism for district courts to reduce a term of imprisonment in light of subsequent changes in the applicable Guidelines. Id. at 825. That procedure for modifying otherwise-final sentences is not "constitutionally compelled," but rather is a "congressional act of lenity" that gives imprisoned defendants "the benefit of later enacted adjustments" to the Guidelines. Id. at 828.

A court's authority to reduce a sentence under Section 3582(c)(2) is circumscribed by both the statute and the Guidelines. A sentence reduction under Section 3582(c)(2) is permissible only where (1) the Sentencing Commission has amended a Guideline; (2) the Commission has determined that the amended Guideline is subject to Section 3582(c)(2); and (3) the amended Guideline has the effect of lowering the Guidelines range on which a particular defendant's sentence was "based." 18 U.S.C. 3582(c)(2); see Sentencing Guidelines § 1B1.10(a)(2), p.s. If all of those conditions are met, the district court "may reduce the term of imprisonment, after considering the factors set forth in [18 U.S.C.] 3553(a)," but only "if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. 3582(c)(2). Those policy statements include Section 1B1.10(b)(2)(A), which generally prohibits reducing the sentence below "the minimum of the amended guideline range." See Dillon, 560 U.S. at 822 (citation omitted); see also id. at 824-830 (holding that Section 1B1.10(b)(2)(A), unlike other aspects of the Guidelines rendered advisory by United States v. Booker, 543 U.S. 220 (2005), remains binding); Sentencing Guidelines § 1B1.10(b)(2)(B) (exception where defendant was originally sentenced below advisory range based on substantial assistance).

Applying Section 3582(c)(2) thus requires a two-step inquiry. Dillon, 560 U.S. at 826. First, the district court must determine whether the defendant is eligible for a reduction at all, i.e., whether a retroactive Guidelines amendment applies to the defendant's sentence, and whether a reduction of that sentence "is consistent with applicable policy statements," 18 U.S.C. 3582(c)(2), including Section 1B1.10. Second, if the defendant is eligible, the court must consider "any applicable [Section] 3553(a) factors" and determine in its discretion whether the defendant should receive a sentence reduction. Dillon, 560 U.S. at 827. The two steps indicate that "Congress intended to authorize only a limited adjustment to an otherwise final sentence and not a plenary resentencing proceeding." Id. at 826; accord Sentencing Guidelines § 1B1.10(a)(3), p.s. (noting that "proceedings" under Section 3582(c)(2) "do not constitute a full resentencing of the defendant").

Consistent with the limited scope of Section 3582(c)(2) proceedings and their nature as an act of legislative grace, fewer and less onerous procedural requirements apply than in original sentencing proceedings. See Dillon, 560 U.S. at 827-828. Unlike original sentencing proceedings -- where Section 3553(c) requires the district court to "state in open court the reasons for its imposition of the particular sentence" and, if the sentence is outside the advisory Guidelines range, to "state[] with

specificity" the "reasons" for the sentence chosen, 18 U.S.C. 3553(c) -- Section 3582(c)(2) imposes no similar requirement. As the court of appeals explained, Section 3582(c)(2) merely directs the court to "'consider[] the factors set forth in section 3553(a) to the extent that they are applicable.'" Pet. App. 5a (quoting 18 U.S.C. 3582(c)(2)) (emphasis omitted). In addition, although Federal Rule of Criminal Procedure 43 requires a defendant's presence at the original sentencing, Fed. R. Crim. P. 43(a)(3), Section 3582(c)(2) proceedings are expressly exempted from that requirement, Fed. R. Crim. P. 43(b)(4). Nor does any right to counsel apply during a Section 3582(c)(2) sentence-modification proceeding. See, e.g., United States v. Johnson, 580 F.3d 567, 569 (7th Cir. 2009) (per curiam); United States v. Webb, 565 F.3d 789, 794 (11th Cir. 2009) (per curiam) (collecting cases).

In light of these distinctive features of Section 3582(c)(2) sentence-reduction proceedings, the court of appeals correctly concluded that, when a district court grants a Section 3582(c)(2) motion in part and indicates that in doing so it considered the Section 3553(a) factors, the statute does not require further explanation of why the court did not reduce the defendant's sentence even more. Pet. App. 5a-13a. The district court's only statutory obligation after determining that a defendant is eligible for a reduced sentence is to "consider[]" any Section 3553(a) factors that are "applicable." 18 U.S.C. 3582(c)(2). To

the extent the court concludes those factors weigh in favor of a reduced sentence that is within but not at the bottom of the amended Guidelines range, the court has no duty to address those factors explicitly. As the court of appeals explained, the fact that Congress expressly required a district court at an original sentencing to explain on the record the reasons for the sentence imposed, but omitted such a requirement in Section 3582(c)(2) proceedings, strongly indicates that Section 3582(c)(2)'s direction to "consider[]" applicable Section 3553(a) factors does not mandate on-the-record explanation. Pet. App. 6a. As the court of appeals recognized, "[i]t would be incongruous * * * to read a duty of explanation into [Section 3553(a)]," which Section 3582(c)(2) incorporates, "when the exact matter has already been considered and addressed by Congress in [Section 3553(c)." Ibid.

At a minimum, as the court of appeals further explained, "the requirements imposed on a court at a sentence-reduction proceeding cannot be greater than those imposed at an original sentencing proceeding." Pet. App. 6a. Given that Section 3553(c) does not apply to Section 3582(c)(2) proceedings -- which "merely represent 'a congressional act of lenity intended to give prisoners the benefit of later enacted adjustments'" -- "[t]he original sentencing procedures required by § 3553(c) must therefore supply the ceiling for sentence-reduction procedures." Id. at 6a-7a (quoting Dillon, 560 U.S. at 828). Petitioner himself acknowledges

that the discussion in Rita v. United States, 551 U.S. 338 (2007), of "what district courts are obliged to do at original sentencings" under Section 3553(c) does not apply to "§ 3582(c)(2) proceedings," which "are limited in scope and not full resentencing proceedings." Pet. 9; see ibid. (disclaiming a broader interpretation that equates the requirements of Section 3553(c) as construed in Rita with those of Section 3582(c)(2)). And "original sentencing proceedings do not require extensive explanations for sentences within the guidelines range." Pet. App. 7a. Rather, "[w]hen a judge decides simply to apply the Guidelines to a particular case," the "[c]ircumstances may well make clear that the judge rests his decision upon the Commission's own reasoning that the Guidelines sentence is a proper sentence (in terms of § 3553(a) and other congressional mandates) in the typical case, and that the judge has found that the case before him is typical." Rita, 551 U.S. at 356-357. "Unless a party contests the Guidelines sentence generally under § 3553(a) -- that is, argues that the Guidelines reflect an unsound judgment, or, for example, that they do not generally treat certain defendant characteristics in the proper way -- or argues for departure, the judge normally need say no more." Id. at 357. The court of appeals thus correctly held that nothing more is required when a district court grants a Section 3582(c)(2) motion and imposes a sentence within the modified Guidelines range. Pet. App. 7a-10a.

b. The court of appeals correctly applied those principles here. Pet. App. 9a-10a. As it explained, "[n]othing indicates in this case [that] the district court failed to consider the § 3553(a) factors or otherwise abused its discretion." Id. at 9a. The district court had expressly indicated on the form reflecting its ruling that it had "taken into account" both "the sentencing factors set forth in 18 U.S.C. § 3553(a)" and "the policy statement set forth" in Section 1B1.10. Ibid. (brackets omitted); see id. at 1b. Its ruling further "correctly indicate[d] the amended guidelines range." Id. at 10a. And although the court's written ruling did not elaborate how it weighed the Section 3553(a) factors, the court of appeals determined that, on this record, "it is safe to infer from the court's rejection of the low-end-of-the-range sentence that it carefully considered the materials * * * presented to it by the parties." Ibid. Those materials "included an incident of misconduct while in prison," ibid., which the Probation Office had discussed in its memorandum addressing petitioner's Section 3582(c)(2) motion, and which had resulted in petitioner's being "sanctioned" and "disciplined" by prison officials. 3 C.A. ROA 3. The court of appeals' factbound determination that the district court considered the relevant factors and did not abuse its discretion in selecting the reduced sentence does not warrant this Court's review. See United States

v. Johnston, 268 U.S. 220, 227 (1925) ("We do not grant * * * certiorari to review evidence and discuss specific facts.").

2. Petitioner errs in contending (Pet. 7-9) that this Court's review is warranted in this case to resolve a lower-court conflict about the interpretation of Section 3582(c)(2). The courts of appeals broadly agree on the basic standard for decisions on Section 3582(c)(2) motions. To the extent tension exists in the language of courts of appeals' opinions, it is not implicated here.

a. The courts of appeals are in general accord that a district court's decision and the record together must enable "meaningful[] review." United States v. Marion, 590 F.3d 475, 477 (7th Cir. 2009); see, e.g., United States v. Christie, 736 F.3d 191, 196 (2d Cir. 2013); United States v. Howard, 644 F.3d 455, 459 (6th Cir. 2011); United States v. Burrell, 622 F.3d 961, 964 (8th Cir. 2010); see also Pet. App. 11a-12a (collecting cases). That principle does not reflexively require a remand whenever a district court does not articulate its reasons. As the Second Circuit has explained, "[t]he failure to state reasons will not always require a remand"; for example, "the reasons for the district court's actions may be obvious from the history of the case." Christie, 736 F.3d at 196; see United States v. Zayas-Ortiz, 808 F.3d 520, 524-525 (1st Cir. 2015) (concluding that the "record as a whole" was "sufficient" to allow the court of appeals

to "infer" that the district court denied a Section 3582(c) motion based on "public safety concerns"); United States v. Trujillo, 713 F.3d 1003, 1009 (9th Cir. 2013) ("[E]ven where a judge never mentions '§ 3553(a),' it may be clear from the court's experience and consideration of the record that the factors were properly taken into account." (citation omitted)).

Petitioner errs in suggesting (Pet. 10-12, 16-19) that the court below has adopted a standard that departs from the uniform requirement of a decision sufficient for meaningful appellate review. It has acknowledged previously, and it reiterated in its decision in this case, "'the need for a district court'" ruling on a Section 3582(c)(2) motion "'to create a meaningful basis for appellate review and to promote the perception of fairness.'" Pet. App. 13a (quoting United States v. Verdin-Garcia, 824 F.3d 1218, 1222 (10th Cir. 2016), cert. denied, 137 S. Ct. 2263 (2017)). Applying that standard, the court of appeals here determined that it could ascertain from the record that the district court considered the relevant factors and did not abuse its discretion. Pet. App. 10a. The court of appeals explained that it could "infer" from the record that the district court had "carefully considered the materials * * * presented to it by the parties," including petitioner's disciplinary record while incarcerated, and had "reject[ed]" petitioner's arguments for a "low-end-of-the-range sentence." Ibid.; see also Verdin-Garcia, 824 F.3d at 1222

(holding district courts' decisions were sufficient where "it [was] apparent" that the courts had considered but "were not persuaded by" defendants' arguments regarding their sentences).

Petitioner is similarly mistaken in contending (Pet. 7-8) that the result reached below is inconsistent with the results other circuits reached in Howard, Burrell, and United States v. Williams, 557 F.3d 1254 (11th Cir. 2009) (per curiam). In each of those cases, the district court granted a lesser reduction than the defendant requested, and the court of appeals remanded because it could not determine, from the record before it, whether the district court had properly considered the statutory sentencing factors. See Howard, 644 F.3d at 461 ("it is impossible for us to ensure that the district court did not abuse its discretion" (citation omitted)); Burrell, 622 F.3d at 966 (not "enough explanation of the [district] court's reasoning to allow for meaningful appellate review"); Williams, 557 F.3d at 1257 ("[T]he district court was required to consider the § 3553(a) factors in making its reduction determination and * * * the record does not allow us to further conclude that the district court did so on this occasion."). Here, in contrast, the court of appeals determined that it could ascertain that the district court had considered the relevant factors and did not abuse its discretion. Pet. App. 10a. The factbound determination that meaningful appellate review was possible on this record differentiates this

case from the decisions on which petitioner relies, irrespective of any tension in the language the courts have used in articulating the relevant standard.

b. Not only is any disagreement in the circuits not implicated by the Tenth Circuit's decision here, but petitioner overstates (Pet. 9-12) the tension in other circuits' approaches. Petitioner asserts (Pet. 9) that the Ninth Circuit in Trujillo has "gone further" than other courts, by holding that reversal is required where a district court "fail[s] to explain its reasons for rejecting all of the defendant's non-frivolous arguments in support of the sentence reduction." But Trujillo recognized that, even in an original sentencing, "there is no mechanical requirement that a sentencing court discuss every factor" under Section 3553(a). 713 F.3d at 1009. As the Ninth Circuit explained, the touchstone is whether the sentencing decision "permit[s] meaningful appellate review," ibid. -- the same standard that other courts (including the court of appeals here) apply. And in any event, petitioner correctly disavows the Ninth Circuit's approach and the rationale underlying it. See Pet. 9 (stating that petitioner is "not seeking a rule as broad as that set forth by the Ninth Circuit").

Petitioner additionally asserts (Pet. 10-12) that the Fourth Circuit in United States v. Smalls, 720 F.3d 193 (4th Cir. 2013), and the Fifth Circuit in United States v. Washington, 375 Fed.

Appx. 390 (5th Cir. 2010) (per curiam), have categorically held that no explanation of the district court's ruling is necessary. Petitioner misreads those decisions. In Smalls, the Fourth Circuit rejected a universal rule requiring a "ritualistic incantation in order" for a district court "to establish its consideration of a legal issue." 720 F.3d at 196 (citation omitted). The Fourth Circuit applied a rebuttable "presumption" that, "in the absence of evidence a court neglected to consider relevant factors," the court did consider those factors, and in that event "does not err in failing to provide a full explanation for its * * * decision." Ibid. A rebuttable presumption that obviates the need for a "ritualistic" recitation of every sentencing factor in each case is not equivalent to a practice of never requiring any explanation at all. The Fifth Circuit's unpublished decision in Washington similarly determined that the defendant had not "demonstrated that the district court abused its discretion." 375 Fed. Appx. at 391. In doing so, the court followed circuit precedent applying a presumption similar to that the Fourth Circuit articulated in Smalls. See ibid. (citing United States v. Evans, 587 F.3d 667, 674 (5th Cir. 2009), cert. denied, 561 U.S. 1011 (2010)); see Evans, 587 F.3d at 673. Further review is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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NOVEMBER 2017

No. 17-5639

In The Supreme Court of the United States

Adaucto Chavez-Meza, Petitioner,

v.

United States of America, Respondent.

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

When the district court declined to grant Petitioner Adaucto Chavez-Meza a proportional sentence reduction under 18 U.S.C. § 3582(c)(2), it provided no reasoning whatsoever beyond checking a box on the AO-247 form providing that it had considered the relevant factors, "if applicable." The Tenth Circuit, breaking with the Sixth, Eighth, Ninth, and Eleventh Circuits, concluded that no more explanation was needed, and that it was satisfied that the district court had not abused its discretion.

Yet effective appellate review depends upon a record of *why* the lower court decided what it did. Indeed, "[a]ppellate review for abuse of discretion is not an empty formality." *Gall v. United States*, 552 U.S. 38, 68 (2007) (Alito, J., dissenting). Within the Fourth, Fifth, and Tenth Circuits, so long as the district court checks the box on the AO-247 form, it can select any sentence within the new guidelines range that it wants, and does not need to give any reasons for its decision. This approach effectively nullifies appellate review and reduces it to an empty formality.

Contrary to the government's contentions, the Fourth, Fifth, and Tenth Circuits' approach starkly conflicts with the approach taken by the Sixth, Eighth, Ninth, and Eleventh Circuits. This case squarely presents the precise issue upon which the circuits are in conflict: whether district courts must provide some

explanation (other than checking the box on the AO-247 form) when they decline to grant proportional sentence reductions and the reasons for the decision are not readily apparent from the record. The factual and procedural posture of this case is clean. The issue surfaces a multitude of times whenever the U.S. Sentencing Commission retroactively revises the Sentencing Guidelines. The Court should grant certiorari to provide lower courts with guidance on this important question so as to maintain nationwide uniformity in the application of sentencing laws.

I. The Decision Below Conflicts With Multiple Circuits That Require District Courts to Provide Some Explanation When Declining to Grant Proportional Sentence Reductions Pursuant to § 3582(c)(2).

On multiple occasions and in multiple contexts, this Court has held that lower courts must explain their decisions with enough specificity to enable meaningful appellate review. *See, e.g.*, *United States v. Taylor*, 487 U.S. 326, 342–43 (1988) (holding that district court abused its discretion in dismissing indictment under the Speedy Trial Act without explaining its reasons); *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 557–58 (2010) (reversing affirmance of a district court's discretionary award of attorney's fees pursuant to 42 U.S.C. § 1988 because the district court did not provide reasonably adequate explanation for the award); *cf. Northcross v. Bd. of Educ.*, 412 U.S. 427, 428–29 (1973) (vacating and remanding case under the Emergency School Aid Act of 1972 because it was impossible to determine if the court of appeals applied the correct standard in denying motion for

attorney's fees); *Taylor v. McKeithen*, 407 U.S. 191, 193–94 & n.4 (1972) (vacating and remanding legislative redistricting case because court of appeals provided no opinion explaining its summary decision). The reason for this requirement is obvious: if appellate courts have no basis upon which to review how a district court exercised its discretion, then appellate review for abuse of discretion is meaningless.

The government acknowledges that multiple circuits, consistent with this Court's precedents, require district courts in § 3582(c)(2) proceedings to provide a level of explanation sufficient to enable the appellate court to conduct meaningful review. (BIO at 19.) The government then unsuccessfully attempts to characterize the Tenth Circuit's decision as being in complete harmony with that requirement. (*Id.* at 11–12, 19–21.) But the Tenth Circuit itself openly acknowledged that its decision directly conflicted with other circuits. (Pet. App. at 10a–11a.) Its ruling was direct and straightforward: "[A]bsent any indication the court failed to consider the [18 U.S.C.] § 3553(a) factors, a district court completing form AO-247 need not explain choosing a particular guidelines-range sentence." (Pet. App. at 9a.) This conflicts with the Sixth, Eighth, Ninth, and Eleventh Circuits, which have all reversed district courts in § 3582(c)(2) cases for failing to include any explanation (other than checking the box on the AO-247 form) when declining to grant proportional sentence reductions.

The government also argues that the Mr. Chavez-Meza misreads the Fourth and Fifth Circuit opinions on the other side of the split, (BIO at 22–23), but it does not contest that those circuits (contrary to the Sixth, Eighth, Ninth, and Eleventh Circuits) summarily affirm § 3582(c)(2) orders denying proportional sentence reductions unless there is record evidence showing that the district court neglected to consider the relevant factors. *See, e.g.*, *United States v. Locklair*, 668 F. App'x 477, 477–78 (4th Cir. 2016) (mem.); *United States v. Johnson*, 641 F. App'x 280, 281 (4th Cir. 2016) (mem.); *United States v. Washington*, 375 F. App'x 390, 390–91 (5th Cir. 2010).

Even if the government were correct (which it is not) as to the Fourth and Fifth Circuits, at a minimum there is still a real conflict between the Tenth Circuit and the Sixth, Eighth, Ninth,[1] and Eleventh Circuits. In light of the fact that nationwide uniformity is a central priority of federal sentencing laws, *see Rita v. United States*, 551 U.S. 338, 349 (2007), this conflict justifies the Court's review.

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[1] The government also questions Mr. Chavez-Meza's characterization of *United States v. Trujillo*, 713 F.3d 1003 (9th Cir. 2013). In the next breath, however, it states that Mr. Chavez-Meza "correctly disavows the Ninth Circuit's approach and the rationale underlying it." (BIO at 22.) If the Ninth Circuit's rationale and approach should be disavowed, then surely they conflict with the rest of the circuits that are supposedly in "general accord" as to the level of explanation necessary to enable appellate review. (BIO at 19.)

II. The Issue Presented is Narrow, Focused, and Suitable for Review.

Contrary to the government's contention, this case represents an ideal vehicle for addressing the level of explanation a district court must provide when imposing a disproportionate sentence pursuant to § 3582(c)(2). The Tenth Circuit based its decision almost entirely upon its interpretation of relevant statutes and case law interpreting those statutes, and the record does not otherwise indicate the reasons for the district court's decision.

A. The Decision Below Was Not Factbound.

The government characterizes the Tenth Circuit's opinion as being "factbound" because the court concluded that it could "infer" that the district court had considered the relevant factors. (BIO at 18.) But the decision below is nearly devoid of actual facts—its description of what an AO-247 form contains is nearly as long as its description of both Mr. Chavez-Meza's crime and his original sentencing proceeding, (*see* Pet. App. at 3a–4a), and the opinion's background section omits entirely the facts regarding Mr. Chavez-Meza's post-sentencing conduct. (*See* BIO at 6.) The decision below did not turn on any particular facts in this case, but instead hinged on the purely legal question of how much explanation is required under § 3582(c)(2). (*See* Pet. App. at 5a–10a.) Instead of being a "factbound" determination, then, the Tenth Circuit's ruling was precisely the

opposite. Because the Tenth Circuit's opinion depended on its interpretation of the relevant statutes, this case presents a clean vehicle for certiorari.

B. The Record Does Not Indicate the Reasons for the District Court's Decision.

The government notes, (BIO at 19–20), that there is no need for additional explanation in § 3582(c)(2) proceedings when the reason for the decision can readily be gleaned from the record. *See, e.g.*, *United States v. Zaya-Ortiz*, 808 F.3d 520, 524–25 (1st Cir. 2015). But this case is nothing like *Zayas-Ortiz*. In that case, both the government and Probation opposed the sentence reduction on specific and particularized public safety grounds—namely, that the defendant had, *inter alia*, held an "enforcer" role in a drug trafficking organization and controlled "drug points" where drugs were sold. 808 F.3d at 524. In denying the motion for sentence reduction, it was readily apparent that the district court agreed with the government and Probation. *Id.* at 525. Here, by contrast, both the government and Probation agreed with Mr. Chavez-Meza that he was entitled to a sentence reduction, and neither objected to his request for a proportional reduction. Probation's memorandum outlining Mr. Chavez-Meza's post-sentencing conduct noted numerous positive achievements and one misconduct report, (BIO at 6), so the significance of that post-sentencing conduct on the district court's decision, if any,[2]

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[2] While a district court must consider the § 3553(a) factors when deciding motions brought pursuant to § 3582(c)(2), it need not consider a defendant's post-

is indeterminable. Thus, unlike *Zayas-Ortiz*, the record does not indicate that the district court simply adopted a party's recommendation.

The government also cites *United States v. Christie*, 736 F.3d 191, 196 (2d Cir. 2013), for the proposition that "the reasons for the district court's action may be obvious from the history of the case." (BIO at 19.) But *Christie* is helpful to Mr. Chavez-Meza, not the government. In *Christie*, the Second Circuit *reversed* the district court for failing to provide any reasons, other than checking the box on the AO-247 form, in denying a § 3582(c)(2) motion. *Id.* at 194, 198. When pointing out that the reasons for a reduction may be "obvious" in some cases, it cited as an example *United States v. Batista*, 480 F. App'x 639 (2d Cir. 2012). As *Christie* explained, the reduction in *Batista* was proportional to the original sentence: both the original and the modified sentence were 31.5% below the low end of the applicable guidelines range. *Christie*, 736 F.3d at 196. Here, the modified sentence was disproportionate to the original sentence, so the rationale behind the reduction was not "obvious" and the Tenth Circuit could only speculate as to the district court's rationale.

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sentencing conduct. *Compare* U.S.S.G. § 1B1.10 cmt. 1(B)(*i*) ("[T]he court shall consider the factors set forth in . . . § 3553(a) . . . ."), *with* § 1B1.10 cmt. 1(B)(*iii*) ("The court may consider post-sentencing conduct of the defendant . . . .").

In sum, this is not a case where the reason for the disproportionate sentence reduction is readily apparent from the record. Thus, this case squarely presents the issue upon which the circuits are divided: whether any explanation is required in § 3582(c)(2) proceedings when the district court does not grant a proportional sentence reduction.

III. The Issue Presented Is Important and Recurring.

As Mr. Chavez-Meza pointed out, many thousands of federal inmates—over 50,000 in the past decade alone—have received sentence reductions under § 3582(c)(2) pursuant to retroactive amendments to the Sentencing Guidelines. (*See* Pet. at 13.) The government acknowledges that other parties have raised related issues in multiple unsuccessful petitions for certiorari in recent years. (BIO at 12.) This does not indicate, as the government suggests, that the issue is unworthy of this Court's review. To the contrary, it shows continuing confusion and inconsistency in the lower courts as to the degree of explanation required in § 3582(c)(2) orders.

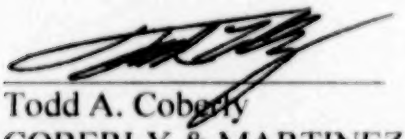
In fact, when the government opposed certiorari in *Verdin-Garcia* and *Hunnicutt*, one of the reasons it provided was that those cases did not cleanly present the issue underlying the putative circuit split—namely, whether a summary ruling without any explanation for the district court's decision is sufficient for appellate review. *See* Brief in Opposition at 26, *Verdin-Garcia v. United States*,

No. 16-6786 (Mar. 10, 2017); Brief in Opposition at 24–25, *Hunnicutt v. United States*, No. 16-8003 (May 17, 2017). In both *Verdin-Garcia* and *Hunnicutt*, the district courts had provided written reasons for denying the requested sentence reductions. *See United States v. Verdin-Garcia*, 824 F.3d 1218, 1219 (10th Cir. 2016); *United States v. Hunnicutt*, 664 F. App'x 521, 523 (6th Cir. 2016). This case, by contrast, does squarely present the issue at the heart of the circuit split. The district court failed to give any reasons (other than simply checking the box on the AO-247 form) when it declined to grant a proportional sentence reduction. The procedural and factual posture of this case is clean, and the issue presented is narrow and focused. Therefore, unlike *Verdin-Garcia* and *Hunnicutt*, this case is an ideal vehicle to resolve the circuit split as to the level of explanation necessary when district courts grant disproportionate sentence reductions in § 3582(c)(2) proceedings.

CONCLUSION

For the foregoing reasons, Petitioner Adaucto Chavez-Meza respectfully requests that the Court issue a writ of certiorari to the United States Court of Appeals for the Tenth Circuit.

Respectfully submitted,



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No. 17-5639

IN THE

Supreme Court of the United States

ADAUCTO CHAVEZ-MEZA,

Petitioner,

v.

UNITED STATES,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

JOINT APPENDIX – VOLUME I

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February 26, 2018

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U.S. DISTRICT COURT
DISTRICT OF NEW MEXICO, ALBUQUERQUE

Criminal Docket for Case #: 1:12-CR-00701-WJ-1

USA

v.

CHAVEZ-MEZA ET AL.

RELEVANT DOCKET ENTRIES

DATE	#	DOCKET TEXT
03/02/2012		Arrest of Adaucto Chavez-Meza (emr) [1:12-mj-00460-LFG] (Entered: 03/02/2012)
03/02/2012	3	NOTICE OF HEARING as to Adaucto Chavez-Meza Initial Appearance set for 3/2/2012 at 09:30 AM in Albuquerque - 340 Pecos Courtroom before Magistrate Judge Lorenzo F. Garcia. (emr)[THIS IS A TEXT-ONLY ENTRY. THERE ARE NO DOCUMENTS ATTACHED.] [1:12-mj-00460-LFG] (Entered: 03/02/2012)
		* * *
03/02/2012	6	Clerk's Minutes before Magistrate Judge Lorenzo F. Garcia: Initial Appearance as to Adaucto Chavez-Meza held; Preliminary/Detention Hearing set for 3/5/2012 at 09:30 AM

DATE	#	DOCKET TEXT
		in Albuquerque - 340 Pecos Courtroom; deft held in custody of USMS (Tape #:FTR-Pecos @ 10:11 am) (Interpreter: M. Kagan) (kd) [1:12-mj-00460-LFG] (Entered: 03/02/2012)
		* * *
03/02/2012)	10	NOTICE OF ATTORNEY APPEARANCE: Kenneth Gleria appearing for Adaucto Chavez-Meza (Gleria, Kenneth) [1:12-mj-00460-LFG] (Entered: 03/02/2012)
		* * *
03/05/2012	12	ORDER OF DETENTION by Magistrate Judge Lorenzo F. Garcia as to Adaucto Chavez-Meza, re: 8 MOTION to Detain filed by USA (kd) [1:12-mj-00460-LFG] (Entered: 03/05/2012)
03/05/2012	13	WAIVER of Preliminary Hearing by Adaucto Chavez-Meza (emr) [1:12-mj-00460-LFG] (Entered: 03/06/2012)
		* * *
03/28/2012	17	REDACTED INDICTMENT as to Adaucto Chavez-Meza, Jesus Omar Lopez Valle, Hector Manuel Lopez-Valle. (dds) (Entered: 03/30/2012)
		* * *
04/04/2012	21	Clerk's Minutes for proceedings held before Magistrate Judge Alan C. Torgerson: Arraignment as to

DATE	#	DOCKET TEXT
		Adaucto Chavez-Meza (1) held; not guilty plea to all counts of the Indictment; court to notify of trial date; motions due 4/26/12; deft remains in custody of USM (Tape #:FTR-Gila @ 10:07 am)(Interpreter: Michael Kagan) (mlg) (Entered: 04/04/2012)
		* * *
10/04/2012	36	NOTICE of Attorney Substitution: Marcos Alvaro Gonzalez substituted for Kenneth Gleria (Gonzalez, Marcos) (Entered: 10/04/2012)
		* * *
02/07/2013	46	NOTICE OF ATTORNEY APPEARANCE Nicholas Jon Ganjei appearing for USA. (Ganjei, Nicholas) (Entered: 02/07/2013)
		* * *
02/25/2013	72	Clerk's Minutes for proceedings held before Magistrate Judge Robert Hayes Scott: Plea Hearing held on 2/25/2013, Guilty Plea entered by Adaucto Chavez-Meza (1) Guilty Count 1,2; Defendant remanded to custody of USMS (Tape #:HONDO @ 10:42 AM) (cl) (Entered: 02/25/2013)
		* * *

DATE	#	DOCKET TEXT
02/25/2013	86	CONSENT TO PLEA BEFORE US MAGISTRATE JUDGE by Adaucto Chavez-Meza (dds) (Entered: 02/27/2013)
		* * *
07/03/2013	121	SENTENCING MEMORANDUM by Adaucto Chavez-Meza (Gonzalez, Marcos) (Entered: 07/03/2013)
07/05/2013	122	RESPONSE by USA as to Adaucto Chavez-Meza re 121 Sentencing Memorandum (Hurtado, Samuel) (Entered: 07/05/2013)
07/08/2013	123	Clerk's Minutes for proceedings held before District Judge William P. Johnson: Sentencing held on 7/8/2013 for Adaucto Chavez-Meza (1), Count(s) 1, 2, SENTENCE IMPOSED: CBOP 135 months as to each count, to run concurrently; 5 years supervised release w/special conditions; SPA $200.00; deft in custody. (Court Reporter: T. Garrett)(Interpreter: Humberto Orive) (dmw) (Entered: 07/08/2013)
07/11/2013	124	JUDGMENT as to Adaucto Chavez-Meza by District Judge William P. Johnson. (rwg) (Entered: 07/11/2013)
07/22/2013	127	NOTICE OF APPEAL by Adaucto Chavez-Meza (Filing Fee - Deliver Payment) (Gonzalez, Marcos) (Entered: 07/22/2013)

DATE	#	DOCKET TEXT
		* * *
10/28/2013	153	ORDER OF USCA - granting motion to withdraw and appointing Todd Coberly as appellate counsel as to Adaucto Chavez-Meza re 127 Notice of Appeal - Final Judgment (kg) (Entered: 10/29/2013)
		* * *
01/21/2014	166	MANDATE of USCA - appellant's motion to dismiss is granted as to Adaucto Chavez-Meza re 127 Notice of Appeal – Final Judgment (Attachments: # 1 Order)(kg) (Entered: 01/21/2014)
03/16/2015	167	MOTION to Reduce Sentence - USSC Amendment by Adaucto Chavez-Meza. (kg) (Entered: 03/17/2015)
		* * *
08/10/2015	169	MOTION to Reduce Sentence - USSC Amendment Stipulated Agreement in Petition for Reduced Sentence by Adaucto Chavez-Meza. (Coberly, Todd) (Entered: 08/10/2015)
04/05/2016	172	ORDER by District Judge William P. Johnson granting 167 Motion to Reduce Sentence - USSC Amendment for Adaucto Chavez-Meza (1)(dmw) (Entered: 04/05/2016)

DATE	#	DOCKET TEXT
04/15/2016	174	NOTICE OF APPEAL by Adaucto Chavez-Meza re 172 Order on Motion to Reduce Sentence - USSC Amendment, (Filing Fee - Waived) (Coberly, Todd) (Entered: 04/15/2016)
		* * *
05/08/2017	188	MANDATE of USCA - the judgment is AFFIRMED as to Adaucto Chavez-Meza re 174 Notice of Appeal - Final Judgment (Attachments: # 1 Opinion, # 2 Judgment) (kg) (Entered: 05/09/2017)
		* * *
01/16/2018	192	PETITION FOR WRIT OF CERTIORARI issued in the Supreme Court of the United States as to Adaucto Chavez-Meza re 174 Notice of Appeal - Final Judgment (kg) (Entered: 01/18/2018)

U.S. COURT OF APPEALS
FOR THE TENTH CIRCUIT

DOCKET #: 16-2062

UNITED STATES

v.

CHAVEZ-MEZA

RELEVANT DOCKET ENTRIES

DATE	#	DOCKET TEXT
04/18/2016		[10360128] Criminal case docketed. Preliminary record filed. DATE RECEIVED: 04/18/2016. Docketing statement, A/Pet designation of record, transcript order form, appointment motion and notice of appearance due 05/02/2016 for Adaucto Chavez-Meza. Notice of appearance due on 05/02/2016 for United States of America. [16-2062] [Entered: 04/18/2016 11:42 AM]
		* * *
04/19/2016		[10360734] Notice of appearance filed by Mr. James Robert Wolfgang Braun for United States of America. CERT. OF INTERESTED PARTIES: y. Served on 04/19/2016. Manner of Service: email. [16-2062] [Entered: 04/19/2016 04:58 PM]

DATE	#	DOCKET TEXT
04/28/2016		[10363653] Notice of appearance submitted by Todd A. Coberly for Appellant Adaucto Chavez-Meza for court review. Certificate of Interested Parties: No. Served on 04/28/2016. Manner of Service: email. [16-2062]–[Edited 04/28/2016 by LG to remove PDF from entry, as pleading was filed on 4/28/2016] TAC [Entered: 04/28/2016 03:15 PM]
		* * *
04/29/2016		[10364106] Order filed by Chief Judge Tymkovich granting Appellant's motion to continue appointment of Todd A. Coberly as counsel of record for appellant. Appointment is effective nunc pro tunc to the date the notice of appeal was filed. Served on 04/29/2016. [16-2062] [Entered: 04/29/2016 02:48 PM]
05/09/2016		[10366663] Record on appeal filed. No. of Volumes: 4, Comments: Vol. I (pleadings); Vol. II (Sealed pleading); Vol. III (Sealed pleadings); Vol. IV (Transcript). Appellant's brief due on 06/20/2016 for Adaucto Chavez-Meza. [16-2062] [Entered: 05/09/2016 01:29 PM]

DATE	#	DOCKET TEXT
06/16/2016		[10378981] Appellant/Petitioner's brief filed by Adaucto Chavez-Meza. 7 paper copies to be provided to the court. Served on 06/16/2016 by email. Oral argument requested? No. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [16-2062] TAC [Entered: 06/16/2016 10:44 AM]
		* * *
08/22/2016		[10398672] Appellee/Respondent's brief filed by United States of America. 8 paper copies to be provided to the court. Served on: 08/22/2016. Manner of service: email. Oral argument requested? No. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [16-2062] JRB [Entered: 08/22/2016 02:03 PM]
		* * *
09/09/2016		[10403668] Appellant/Petitioner's reply brief filed by Adaucto Chavez-Meza. 7 paper copies to be provided to the court. Served on 09/09/2016. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [16-2062] TAC [Entered: 09/09/2016 12:15 PM]
		* * *

DATE	#	DOCKET TEXT
10/14/2016		[10413804] Sealed motion filed by United States of America to supplement the record on appeal. Served on: 10/14/2016 Manner of service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [16-2062] JRB [Entered: 10/14/2016 01:41 PM]
10/14/2016		[10413880] Order filed by Clerk of the Court granting appellee's amended motion to supplement the record on appeal, denying as moot, and in light of this court granting the amended motion to supplement the record on appeal filed by Appellee United States of America. The clerk shall create and file a sealed supplemental volume consisting of the pleading attached to the amended motion to supplement the record on appeal. Served on 10/14/2016. [16-2062] [Entered: 10/14/2016 04:09 PM]
10/14/2016		[10413883] Supplemental record on appeal filed. No. of Volumes: 1, Comments: Volume 1- SEALED district court order. [16-2062] [Entered: 10/14/2016 04:11 PM]

* * *

DATE	#	DOCKET TEXT
11/16/2016		[10422111] Notice of appearance submitted by A. Nathaniel Chakeres for Appellant Adaucto Chavez-Meza for court review. Certificate of Interested Parties: No. Served on 11/16/2016. Manner of Service: email. –[Edited 11/16/2016 by DD. Removed PDF as pleading filed 11/16/16][16-2062] AC [Entered: 11/16/2016 08:29 AM]
		* * *
11/16/2016		[10422479] Order filed by Gorsuch and Matheson – "This matter is before the court on Appellant's Motion to Allow Associate Attorney to Present Oral Argument and for Travel Authorization. Upon careful consideration, the motion is granted." (see order for specifics) Served on 11/16/2016. [16-2062] [Entered: 11/16/2016 04:09 PM]
		* * *
11/17/2016		[10422583] Order filed by Clerk of the Court submitting the case on the briefs. All counsel scheduled to appear are excused from attendance at oral argument on January 17, 2017 in Denver, Colorado. Served on 11/17/2016. [16-2062] [Entered: 11/17/2016 08:40 AM]

DATE	#	DOCKET TEXT
01/17/2017		[10436701] Case submitted on the briefs to Judges Tymkovich, Seymour and Kelly. [16-2062] [Entered: 01/17/2017 11:44 AM]
04/14/2017		[10459474] Affirmed. Terminated on the merits after submissions without oral hearing. Written, signed, published; Judges Tymkovich (authoring judge), Seymour and Kelly. Mandate to issue. [16-2062] [Entered: 04/14/2017 08:17 AM]
04/14/2017		[10459476] Judgment for opinion filed. [16-2062] [Entered: 04/14/2017 08:26 AM]
05/08/2017		[10465060] Mandate issued. [16-2062] [Entered: 05/08/2017 07:04 AM]
07/13/2017		[10482484] Notice from the Supreme Court of the United States that the application for an extension of time to file a petition for a writ of certiorari has been presented to Justice Sotomayor, who on July 10, 2017, extended the time to and including August 14, 2017. Served on 07/10/2017. Manner of Service: US mail. [16-2062] [Entered: 07/13/2017 01:38 PM]
08/18/2017		[10491475] Petition for writ of certiorari filed by Adaucto Chavez-Meza on 08/14/2017. Supreme Court

DATE	#	DOCKET TEXT
		Number 17-5639. [16-2062] [Entered: 08/18/2017 01:17 PM]
01/16/2018		[10528590] Supreme court order dated 01/12/2018 granting certiorari filed. [16-2062] [Entered: 01/16/2018 02:21 PM]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
United States District Court
Albuquerque, New Mexico

MAR 28, 2012

MATTHEW J. DYKMAN
CLERK

Criminal No. 12-701WJ

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ADAUCTO CHAVEZ-MEZA, JESUS OMAR LOPEZ-VALLE, and HECTOR MANUEL LOPEZ-VALLE,

Defendants.

Count 1: 21 U.S.C. § 846: Conspiracy;

Count 2: 21 U.S.C. §§ 841(a)(1) and (b)(1)(A): Possession With Intent to Distribute 500 Grams and More of a Mixture and Substance Containing a Detectable Amount of Methamphetamine; 18 U.S.C. § 2: Aiding and Abetting;

Count 3: 18 U.S.C. §§ 922(g)(5) and 924(a)(2): Prohibited Person in Possession of Firearms.

INDICTMENT

The Grand Jury charges:

Count 1

On or about March 1, 2012, in Bernalillo County, in the District of New Mexico, the defendants, **ADAUCTO CHAVEZ-MEZA, JESUS OMAR LOPEZ-VALLE, and HECTOR MANUEL LOPEZ-VALLE,** did unlawfully, knowingly and intentionally combine, conspire, confederate and agree together and with each other, and with other persons whose names are known and unknown to the Grand Jury, to commit the following offense against the United States, to wit: possession with intent to distribute 500 grams and more of a mixture and substance containing a detectable amount of methamphetamine, contrary to 21 U.S.C. §§ 841(a)(1) and (b)(1)(A).

In violation of 21 U.S.C. § 846.

Count 2

On or about March 1, 2012, in Bernalillo County, in the District of New Mexico, the defendants, **ADAUCTO CHAVEZ-MEZA, JESUS OMAR LOPEZ-VALLE, and HECTOR MANUEL LOPEZ-VALLE,** unlawfully, knowingly and intentionally possessed with intent to distribute 500 grams and more of a mixture and substance containing a detectable amount of methamphetamine.

In violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A), and 18 U.S.C. § 2.

Count 3

On or about March 1, 2012, in Bernalillo County, in the District of New Mexico, the defendant, **JESUS OMAR LOPEZ-VALLE,** an alien illegally and

unlawfully in the United States, knowingly possessed, in and affecting commerce, firearms: to wit, a Glock, model 23, .40 caliber pistol, serial number MEF032; a Marlin, model 110M, .22 caliber rifle, serial number 72430491; and a Norinco, model NHM-91, 7.62x39 mm, serial number 9200402.

In violation of 18 U.S.C. §§ 922(g)(5) and 924(a)(2).

A TRUE BILL

/s/

FOREPERSON OF THE GRAND JURY

/s/ [Illegible]
Assistant United States Attorney

/s/ [Illegible]

[1] UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

[Filed 12/02/13]

Criminal Case No. 12-701

UNITED STATES OF AMERICA,

Plaintiff,

v.

ADAUCTO CHAVEZ-MEZA,

Defendant.

Bonito Courtroom
Albuquerque, New Mexico
July 8, 2013
9:45 a.m.

Before the Honorable William P. Johnson
United States District Judge

TRANSCRIPT OF SENTENCING

APPEARANCES:

For the Plaintiff:	Samuel A. Hurtado, Esq. P. O. Box 607 Albuquerque, NM 87103
For the Defendant:	Marcos A. Gonzalez, Esq. 1905 Lomas Blvd., NW Albuquerque, NM 87102

For U.S. Probation: C. C de Baca
333 Lomas Blvd., NW, Ste. 170
Albuquerque, NM 87102

Official Court Reporter: Thomas L. Garrett
333 Lomas Blvd., NW, Ste. 270
Albuquerque, NM 87102
(505) 348-2334

Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

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[3] (In session at 9:45 a.m.)

THE COURT: All right. The next case is United States versus Adaucto Chavez-Meza, 12CR701.

MR. S..MUEL HURTADO: Samuel Hurtado for the United States.

MR. MARCOS GONZALEZ: Good morning, Your Honor. Marcos Gonzalez on behalf of Mr. Chavez-Meza.

THE COURT: Was the Presentence Report reviewed with Mr. Chavez-Meza?

MR. GONZALEZ: It was, Your Honor, in English. He does speak English. Before we begin, Your Honor, Mr. Chavez-Meza has approached me this morning and would ask for a continuance on this matter, Your Honor, on some other –

THE COURT: On what grounds?

MR. GONZALEZ: Sentencing issues that he would like to explore in this matter, and given the sentence that he – the high sentence that he's looking at, I would like to address this with him, Your Honor.

THE COURT: When was this Presentence Report disclosed?

MR. GONZALEZ: It's been a couple of months, Your Honor, looks like back in May, Your Honor.

THE PROBATION OFFICER: Your Honor, it was on May 2nd.

THE COURT: May the 2nd?

[4] THE PROBATION OFFICER: Yes, sir.

THE COURT: It seems to me like there's been time to explore sentencing issues if this matter was disclosed on May the 2nd. I mean, I think under the rules, what's it, 75 days?

What's the government's position?

MR. HURTADO: Your Honor, as I indicated to Mr. Gonzalez, the United States would oppose. The reason for that is the United States has, on two previous occasions out of professional courtesy, already extended him an opportunity to continue this matter in order to file a Sentencing Memorandum. Defendant has already filed a Sentencing Memorandum. The United States has filed its response, and it's the United States' position that this sentencing hearing should go forward.

I'd also like to note the government is ready and also its FBI agent is present for this sentencing hearing, Your Honor. It's the government's position, therefore, that this matter should proceed as scheduled.

THE COURT: Anything else, Mr. Gonzalez, you want to state on this?

MR. GONZALEZ: No, Your Honor. We do understand that this was continued previously. This was brought to my attention this morning, Your Honor. I thought I would bring it before the Court and –

THE COURT: I understand. The defendant's looking at [5] a lengthy sentence because he was involved in distributing methamphetamine. I see no – I've got a busy docket. This matter's been continued before. You know, in terms of the guidelines, they are what they are. There's a request, I think, that defense counsel filed in terms of the Sentencing Memorandum for a below-guideline sentence, and I'll let you make argument on that.

MR. GONZALEZ: Thank you, Your Honor.

THE COURT: But I think the matter, we need to proceed with this, and so the request that this be continued again will be denied.

MR. GONZALEZ: Thank you, Your Honor.

THE COURT: Before I hear from defense counsel, Mr. Hurtado, the government's position on sentencing in this case?

MR. HURTADO: Yes, Your Honor. The United States won't rehash in its entirety the response that the government filed to the defendant's Sentencing Memorandum, but very briefly, the United States would oppose the defendant's request to a variance. It's the government's position that there is no reason for a variance in this case and that the appropriate sentence is 135 months as set forth in the government's Sentencing Memorandum.

One of the primary issues that the United States objects to is the manner in which the defendant describes the [6] offense for which he has been convicted. Throughout the Sentencing Memorandum that the United States has read, it refers to his serious drug offense as, quote, a transgression, a case of aberrant behavior. In the letter to the Court that was drafted by the family, they referred to his transgression as a mistake, and Your Honor, the United States would take issue with that, because this isn't somebody who was stealing a loaf of bread to feed his family. This is somebody who was selling four pounds of methamphetamine to an undercover police officer, and according to the other coconspirators in this case, the defendant had been doing this repeatedly on various occasions.

And given the nature and circumstances of this case, it is the government's position that a sentence within the guideline range is appropriate, and the United States would also like to note that 135 months is actually at the low end, and the government believes that's appropriate.

Thank you.

THE COURT: Mr. Gonzales, I'll hear additional argument from you and then any statement the defendant wishes to make.

MR. GONZALEZ: Certainly, Your Honor. This is a case where it's the amount and purely the amount that suggests a sentence that is at the 135-month range, Your Honor. As you noted earlier, we are here to ask for a sentence below the [7] guidelines, I think well below the guidelines. His history and characteristics of Mr. Chavez himself are unlike many of those others that are involved in this sort of dealings with this

amount of methamphetamines, Your Honor. He does understand what he did, and he did take responsibility. He's never played games with the Court or anything. He's, you know, took responsibility well before trial. It wasn't done on the eve of trial, Your Honor. It was done well before trial.

As far as his history and characteristics of Mr. Chavez himself that would distinguish him is he worked his entire adult life. Even though he was involved in this one incident that we're aware of, he worked. He has skills. He works in construction. He worked for Walmart. He was continually employed – employed, Your Honor, job after job. Doing so, he gained experience and skills that are valuable to him then and will be valuable to him once he returns to society, Your Honor. He's highly employable. He'll be desired by many employers.

As far as his family life, his family is here in the audience today, Your Honor. They've been at every hearing so far. They've been in constant contact with me on pretty much a weekly, biweekly basis, Your Honor, inquiring as to Mr. Chavez's well-being and how the case is proceeding. Once he returns, they are prepared to – to support him and help him get back on his feet, Your Honor. Mr. Chavez is active in the [8] church, has strong community support, Your Honor, and I believe this is aberrant behavior, Your Honor. I don't believe that Mr. Chavez – he – he did make a mistake, Your Honor. He got caught up in this lifestyle that he was living, made some bad decisions, but has taken responsibility for those decisions and would like to move past them.

He understands that he is going to have to serve some time, but we'd like to minimize that as much as possible, Your Honor, so that he can move on from this.

This is his first time that he has been in any sort of trouble, and I don't think he'll have any trouble like this, I can assure you after speaking with him and his family, that he will not be before any court in the future, Your Honor. He had not been before and will not be again after.

In fact, this may be a good time and a good thing that has happened to him at a good time so that he was able to correct his transgressions and move on from that. He's young. He's got lots of skills make him employable, Your Honor, and he's got good support at his family, with his family at home, Your Honor.

Thank you.

THE COURT: Did the defendant want to make a statement?

MR. GONZALEZ: He has a letter prepared, Your Honor. Would Your Honor like to see the letter or would you like him [9] to read it?

THE COURT: I can – whatever your preference is.

THE DEFENDANT: I will read it for you, Your Honor.

THE COURT: Pardon me?

THE DEFENDANT: I'll read it for you.

THE COURT: I'm sorry, do you want to read it or do you want me to read it?

THE DEFENDANT: I'll read it for you.

THE COURT: Okay. Certainly.

THE DEFENDANT: I would like to tell you that I'm sorry for my actions. I want to say sorry to my family. They're present right here, to the United States, to anybody I brought to harm or do anything bad to them.

This choice that I have made in my past, I would also like to apologize to my family for the pain that I have inflicted on them for a choice I have made.

Now that I have been incarcerated 16 months, it has given me time to think about my past and the bad choice I was making, the people I was hanging around, and living life on the edge tough at the time – though at the time, I thought was a good life. In fact, it wasn't. I was only thinking about myself instead of doing what was right and about the people who meant the most to me, which is my family and the loved ones.

I spend my time incarcerated getting closer to God and my family. I also thought about how I would change my life [10] for the future, to make better choices for myself and family. What I am asking a chance to prove to the Court and my family and myself that I can be a better person and live life in a positive way, also to make better choices for my family and myself as a – as I know I've never been in any kind of trouble in the past.

I would like to hope that – that you will take into consideration and sentence me fairly so that I can reunite with my family and move forward with my life in a better and positive way. Thank you for your time and consideration. Please let the Court have mercy on me. Respectfully, Adaucto Chavez.

Thank you.

THE COURT: Mr. Hurtado, the – he was charged on in the counts that are in this Indictment, and then there was a Plea Agreement, and he pled guilty to the two counts. Now, the Presentence Report did reflect other drug-trafficking activity, but he was not assessed – ma'am, you need to sit down.

I didn't see that the pre – that, in terms of the guideline calculations, there was any enhancement for any of this other alleged drug-trafficking activity.

MR. HURTADO: No, sir, that's correct. Some of the information that the United States – the United States obtained was from the coconspirator, Jesús Omar Lopez-Valle, who indicated that he, along with the other coconspirators, the [11] defendant included, had previously transported methamphetamine on various occasions.

THE COURT: Right, but there – in other words, it didn't factor into the guideline calculation.

MR. HURTADO: That's correct. Yes, sir.

THE COURT: All right. I'll adopt the Presentence Report's factual findings and the guideline applications. I've consulted the sentencing factors of 18 U.S.C. 3553(a)(1) through (7). The offense level is 33. The criminal history category is I. Under the sentencing guidelines, that's a guideline range of 135 to 168 months. I'll note on March the 1st, 2012, the des – the defendant distributed 1.7 kilograms of actual methamphetamine to an undercover FBI employee in Albuquerque, New Mexico.

Now, the reason the guideline sentence is high in this case, even the low end of 135 months, is because of the quantity, 1.75 kilograms of actual methamphetamine, and that's a significant quantity and one of the, again, one of the other reasons that the penalty is severe in this case, is because of methamphetamine. It destroys – I mean, I've been doing this a long time, and from what I gather and what I've seen, methamphetamine, it destroys individual lives, it destroys families, it can destroy communities.

Taking into account the history and characteristics of the defendant and mindful that I'm required to impose a [12] sentence that is sufficient but not greater than necessary to satisfy the goals of sentencing, I will find that a sentence that is sufficient but not greater than necessary to satisfy the goals of sentencing is a sentence on the low end of the guideline range of 135 months. That'll be the term as to each of Counts 1 and 2, to run concurrently, for a total term of incarceration of 135 months. If the defendant's eligible while he's in the Bureau of Prisons, I recommend he participate in the 500-hour drug and alcohol treatment program.

As to Counts 1 and 2, the defendant is placed on supervised release for a term of five years as to each count, those terms to run concurrent, for a total term of supervised release of five years. That term is unsupervised with standard conditions and mandatory conditions and the following special condition, and I'm imposing this condition because the Presentence Report reflects that the defendant's not a U.S. citizen but a permanent resident, so he's going to be subject to deportation. And it's been my experience that, with a drug-trafficking offense of this nature, that the United States government will proceed to deport the defendant after service of the sentence. So in terms of the special condition, I'll impose the requirement that the defendant comply with all Immigrations and Customs Enforcement laws.

Also, no fine will be imposed based on the defendant's lack of financial resources. I do have to impose [13] what is called a special penalty assessment of $100, and I'm required to state that it's due immediately.

And finally, I must advise the defendant within 14 days of the entry of the judgment he can appeal the sentence. He also has the right to apply for leave to appeal in forma pauperis if unable to pay for the cost of an appeal.

Did you wish me to make a recommendation to the Bureau of Prisons where the defendant serve his sentence?

MR. GONZALEZ: I believe Florence, Colorado, Your Honor.

THE COURT: I'll recommend that the defendant be designated to serve his sentence at the Florence, Colorado, facility.

All right. Is there anything else on this matter?

MR. GONZALEZ: No, Your Honor.

THE COURT: All right. I'm going to take a short break.

(Recess at 10:00 a.m.)

[14] REPORTER'S CERTIFICATE

I, THOMAS L. GARRETT, Official Court Reporter for the United States District Court, District of New Mexico, hereby certify that I reported the proceedings in 12CR701 and that the pages contained herein are a true and correct transcript of the proceedings.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest whatsoever in the final disposition of this case in any court.

WITNESS MY HAND this 30th day of November 2013.

Thomas L. Garrett, CCR, FCRR
Official Court Reporter
CCR No. 255

AO 245B (Rev 12/10) Criminal Judgment Sheet 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

[Filed 07/11/13]

Case Number: 1:12CR00701-001WJ
USM Number: 65561-051
Defense Attorney: Marcos Gonzalez

UNITED STATES OF AMERICA

v.

ADAUCTO CHAVEZ-MEZA

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or
After November 1, 1987)

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 and 2 of Indictment

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☐ after a plea of not guilty was found guilty on count(s)

The defendant is adjudicated guilty of these offenses:

Title and Section Nature of Offense		*Offense Ended*	*Count Number(s)*
21 U.S.C. Sec. 846	Conspiracy to Violate 21 U.S.C. Sec. 841(b)(1)(A)	03/01/2012	1

21 U.S.C. Sec. 841(b)(1)(A)	Possession With Intent to Distribute 500 Grams and More of a Mixture and Substance Containing a Detectable Amount of Methamphetamine	03/01/2012	2

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984. The Court has considered the United States Sentencing Guidelines and, in arriving at the sentence for this Defendant, has taken account of the Guidelines and their sentencing goals. Specifically, the Court has considered the sentencing range determined by application of the Guidelines and believes that the sentence imposed fully reflects both the Guidelines and each of the factors embodied in 18 U.S.C. § 3553(a). The Court also believes the sentence is reasonable, provides just punishment for the offense and satisfies the need to impose a sentence that is sufficient, but not greater than necessary to satisfy the statutory goals of sentencing.

☐ The defendant has been found not guilty on count .

☐ Count dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant

must notify the court and United States attorney of material changes in economic circumstances.

7/8/2013
Date of Imposition of Judgment

/s/ William P. Johnson
Signature of Judge

Honorable William P. Johnson
United States District Judge
Name and Title of Judge

7/11/2013
Date Signed

Defendant: Adaucto Chavez-Meza
Case Number: 1:12CR00701-001WJ

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **135 months**.

A term of 135 months is imposed as to each of Counts 1 and 2; said terms shall run concurrently.

☒ The court makes the following recommendations to the Bureau of Prisons:

Florence Federal Correctional Institution, Florence, Colorado, if eligible

The Court recommends the defendant participate in the Bureau of Prisons 500 hour drug and alcohol treatment program.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at on

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on

☐ as notified by the United States Marshal

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____

to _____ at _____ with a Certified copy of this judgment.

_____

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

Defendant: Adaucto Chavez-Meza
Case Number: 1:12CR00701-001WJ

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **5 years unsupervised**.

A term of 5 years is imposed as to each of Counts 1 and 2; said terms shall run concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance.

The defendant shall refrain from any unlawful use of a controlled substance.

The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable).
- ☒ The defendant shall cooperate in the collection of DNA as directed by statute. (Check, if applicable).
- ☐ The defendant shall register with the state, local, tribal and/or other appropriate sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Criminal Monetary Penalties sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer in a manner and frequency directed by the Court or probation officer;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any

paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and

Defendant: Adaucto Chavez-Meza
Case Number: 1:12CR00701-001WJ

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall comply with all Immigration and Customs Enforcement laws. This special condition is imposed to ensure the defendant complies with all immigration laws.

Defendant: Adaucto Chavez-Meza
Case Number: 1:12CR00701-001WJ

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties in accordance with the schedule of payments.

☐ The Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

Totals:	**Assessment**	**Fine**	**Restitution**
	$200	**$0.00**	**$0.00**

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

A ☒ In full immediately; or

B ☐ $ immediately, balance due (see special instructions regarding payment of criminal monetary penalties).

Special instructions regarding the payment of criminal monetary penalties: Criminal monetary penalties are to be made payable by cashier's check, bank or postal money order to the U.S. District Court Clerk, 333 Lomas Blvd. NW, Albuquerque, New Mexico 87102 unless

otherwise noted by the court. Payments must include defendant's name, current address, case number and type of payment.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program, are to be made as directed by the court, the probation officer, or the United States attorney.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
ALBUQUERQUE DIVISION

FILED
United States District Court
Albuquerque, New Mexico
MAR 16, 2015
MATTHEW J. DYKMAN
CLERK

Case No. 1:12-cr-00701-001WJ

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ADAUTO CHAVEZ MEZA

Defendant.

DEFENDANT'S MOTION TO AMEND PRESENTENCE INVESTIGATION, RECALCULATE THE FEDERAL SENTENCING GUIDELINES AND TO THEREAFTER RESENTENCE DEFENDANT PURSUANT TO TITLE 18 U.S.C. §3582(c)(2)

COMES NOW Defendant, CHAVEZ MEZA. Pro Se, files this Motion pursuant to Title 18 U.S.C. §3582(c)(2) to amend the presentence investigation report, recalculate the Federal Sentencing Guidelines in the above referenced case and to thereafter resentence Defendant and as ground therefore states as follows.

I. MOTION

1. The Defendant CHAVEZ MEZA was sentneced to a term of 135 months imprisonment predicate on the Federal Sentencing Guidelines. On April 30, 2014 the United States Sentencing Commission enacted Amendment 782 to the United States Sentencing Guidelines (U.S.S.G.).

2. Based on Amendment 782, Defendant moves that his guideline range be reduced and that Defendant be resentenced accordingly.

II. PROCEDURAL HISTORY AND BACKGROUND

3. In march 2012 Defendant was charged by indictment for Violation of 21 U.S.C. 846 Conspiracy to violate 21 U.S.C. 841.

4. On July 8 2013 Defendant was sentenced to 135 months imprisonment.

5. Defendant has been in custody since his arrest in march of 2012 with the Federal Bureau of Prisons and is scheduled for release on December 19 2021

III. BASIS FOR RELIEF REQUESTED

6. On April 30, 2014 the United States Sentencing Commission amended the drug quantity table under §2D1.1(c) which reduced the base offense level for all controlled substances including methamphetamine by two levels. See Amendment 782 to the U.S.S.G.

7. Amendment 782 changed the Drug Quantity Table in U.S.S.G. §2D1.1(C) and the drug precursor table in U.S.S.G. §2D1.11 "Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy." The Amendment is retroactive as of the date of this Defendant's filing of this Motion and is available to all defendants who are

currently in custody. The Defendant falls squarely within the goals set forth in the Amendment's reduction of two levels for all non-violent drug offenses.

8. Defendant, having been sentenced in 2013 was sentenced predicate on the now outdated guideline range and is now entitled for consideration by this Honorable Court to be resentenced predicate on the newly revised two level reduction Guideline Range.

9. Based on this retroactive Amendment 782, it is requested that the United States Probation Office hereby amend the applicable total offense level in Defendant's P.S.I. to reflect the two level reduction set forth in said Amendment 782, Title 18 U.S.C. §3582(c)(2) and that the amended report be forwarded to this Court, to the United States Attorneys Office, the Bureau of Prisons D.S.C.C. Office for Defendant's record and a copy to Defendant for such further action is necessary and appropriate under the law.

IV. CONCLUSION

Wherefore, Defendant CHAVEZ MEZA, for the reasons stated prays that this Honorable Court will grant this Motion to amend the presentence investigation report, recalculate Defendant's Federal Sentencing Guideline Range and to thereafter resentence the Defendant and issue such other and further relief as is just and proper.

Respectfully signed and submitted this 11 day of March, 2015

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this 11 day of March, 2015 I placed this Title 18 §3582(c)(2) Motion into the institutional mailbox at C.C.A. Eden Correction for forwarding to the Clerk of Court utilizing the United States Postal Service.

Certified Mail # Institutional Mail

Signed, /s/ Adaucto Chavez

3-11-2015

TO: U.S. Dist. Court Clerk

RE: Aduacto Chavez-Meza
Reg # 65561-051
C.C.A. Detintion
P.O. Box. 605
Eden, T.X. 76837-0605

Case No. 1:12-CR-00701-001WJ

Dear Clerk,

Please find my motion for filing to the Court for the two level Reduction, please allow me a return copy, enclosed is a pray pay stamp envelope. Thank you.

/s/ Adaucto Chavez

Adaucto Chavez Meza
#65561051
CCA Eden Correctional
po box 605
Eden, TX. 76837-0605

[U.S. POSTAGE STAMPS]
RECEIVED
At Albuquerque NM
MAR 16 2015
MATTHEW J. DYKMAN
CLERK

US District Court Clerk
333 Lomas blvd NW
Albuquerque, NM 87102

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

[Filed 08/10/15]

Criminal No.: 12-701-1 WJ

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ADAUCTO CHAVEZ-MEZA,

Defendant.

STIPULATED AGREEMENT IN PETITION FOR REDUCED SENTENCE UNDER 18 U.S.C. § 3582(c)(2) REGARDING DRUG QUANTITY TABLE

The Defendant and the United States have reached a stipulated agreement regarding Defendant's **eligibility for a reduced sentence** under 18 U.S.C. § 3582(c)(2) and the Sentencing Guideline policies under section 1B1.10.

As discussed in the United States Probation Memorandum of July 17, 2015, the parties agree that Amendment 782 results in a lower sentencing range for the Defendant. In addition, they agree that the new sentencing range is a term of 108 months to 135 months of imprisonment (i.e., up to the current term of imprisonment that previously was imposed by this Court). The parties agree that the Court has authority under § 3582(c)(2) to impose a new sentence within that range.

The Probation Memorandum stated that the Bureau of Prisons Sentry Disciplinary Report indicates misconduct by Defendant while incarcerated for phone abuse for using another inmate's phone number. The United States, however, agrees that this misconduct is not disqualifying in considering the 18 U.S.C. § 3553(a) sentencing factors.

The Defendant asks the Court to impose an amended sentence of 108 months, which is within the new sentencing range. Defendant notes that the Court sentenced him to the low end of the guidelines range as originally calculated. Defendant further notes that the Court, at sentencing, stated that "the reason the guideline sentence is high in this case, even [at] the low end of 135 months, is because of the quantity, 1.75 kilograms of actual methamphetamine." The Court at sentencing specifically found "that a sentence that is sufficient but not greater than necessary to satisfy the goals of sentencing is a sentence on the low end of the guideline range." While incarcerated, Defendant has received certificates for completing classes in masonry and construction, and is working towards obtaining his GED. Accordingly, Defendant respectfully requests that the Court sentence him at the low end of the newly-calculated guidelines range, i.e. 108 months of imprisonment.

Respectfully submitted,

Todd A. Coberly
Todd A. Coberly
1322 Paseo de Peralta
Santa Fe, NM 87501
(505) 989-1029
todd@coberlymartinez.com

In Agreement,

WILLIAM J. PFLUGRATH
Assistant United States Attorney
Coordinator for § 3582 Responses
(505) 346-7274

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of August, 2015, I filed the foregoing pleading using the CM/ECF system, which will electronically send notification of such filing to all counsel of record.

/s/ Todd A. Coberly
Todd A. Coberly

AO 247 (Rev. 11/11) Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2)
Page 1 of 2 (Page 2 Not for Public Disclosure)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

[Filed 04/05/16]

Case No: 1:12CR00701-001WJ

USM No: 65561-051

Todd A. Coberly
Defendant's Attorney

UNITED STATES OF AMERICA

v.

ADAUCTO CHAVEZ-MEZA

Date of Original Judgment: July 11, 2013

Date of Previous Amended Judgment: _____

(Use Date of Last Amended Judgment if Any)

ORDER REGARDING MOTION FOR SENTENCE REDUCTION PURSUANT TO 18 U.S.C. § 3582(c)(2)

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered

such motion, and taking into account the policy statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,

IT IS ORDERED that the motion is:

☐ DENIED. ☒ GRANTED and the defendant's previously imposed sentence of imprisonment *(as reflected in the last judgment issued)* of 135 months **is reduced to** 114 months.

(Complete Parts I and II of Page 2 when motion is granted)

Except as otherwise provided, all provisions of the judgment dated July 11, 2013 shall remain in effect.

IT IS SO ORDERED.

Order Date: 4/5/2016

/s/ [Illegible]
Judge's signature

Effective Date: _____
(if different from order date)

William P. Johnson, United States District Judge
Printed name and title

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

[Filed 04/15/16]

Case No. 12-cr-00701 WJ

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ADAUCTO CHAVEZ-MEZA,

Defendant.

NOTICE OF APPEAL

Defendant Adaucto Chavez-Meza, by and through undersigned counsel, hereby gives notice that he appeals to the United States Court of Appeals for the Tenth Circuit the Order Regarding Motion for Sentencing Reduction Pursuant to 18 U.S.C. § 3582(c)(2), entered on April 5, 2016.

Respectfully submitted,

COBERLY & MARTINEZ, LLLP

/s/ Todd A. Coberly

Todd A. Coberly
1322 Paseo de Peralta
Santa Fe, NM 87501
(505) 989-1029
todd@coberlymartinez.com

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of April, 2016, I filed the foregoing *Notice of Appeal* using the CM/ECF system, which will electronically send notification of such filing to all counsel of record.

/s/ Todd A. Coberly
Todd A. Coberly

PUBLISH

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

April 14, 2017

Elisabeth A. Shumaker
Clerk of Court

No. 16-2062

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ADAUCTO CHAVEZ-MEZA,

Defendant-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO (D.C. NO. 1:12-CR-00701-WJ-1)

Submitted on the Briefs:

Todd A. Coberly, Coberly & Martinez, LLLP, Santa Fe, New Mexico, for Appellant.

James R.W. Braun, Assistant United States Attorney, and Damon P. Martinez, United States Attorney, Office of the United States Attorney, Albuquerque, New Mexico, for Appellee.

Before **TYMKOVICH**, Chief Judge, **SEYMOUR**, and **KELLY**, Circuit Judges.

TYMKOVICH, Chief Judge.

This case requires us to determine how much explanation a district court must provide when granting a sentence-reduction motion under 18 U.S.C. § 3582(c)(2) and choosing a sentence within the revised Sentencing Guidelines range.

Adaucto Chavez-Meza pleaded guilty to drug conspiracy charges in 2013. He originally received a prison sentence of 135 months, the Sentencing Guidelines minimum. In 2014, the Sentencing Commission amended the Guidelines to reduce the relevant offense levels. Chavez-Meza then sought and was granted a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2). He requested the court reduce his sentence to 108 months, the minimum under the revised guidelines range, but the court only reduced his sentence to 114 months. In confirming the new sentence, the district court issued a form order stating it had "tak[en] into account the policy statement set forth at USSG § 1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a)." Chavez-Meza appeals his reduced sentence, claiming the district court erred by failing to adequately explain how it applied the § 3553(a) factors in imposing a 114-month sentence.

We **AFFIRM** the district court's sentence-reduction order. Section 3582(c)(2) does not require additional explanation when a district court imposes a guidelines sentence and affirmatively states that it considered the § 3553(a) factors in its decision.

I. Background

Chavez-Meza pleaded guilty to conspiracy and possession with intent to distribute methamphetamine. His guidelines range was 135–168 months. The government recommended a 135-month sentence at the low end of the range, which the sentencing court accepted. The court explained "the reason the guideline sentence is high in this case . . . is because of the quantity, 1.75 kilograms of actual methamphetamine . . . . [O]ne of the other reasons that the penalty is severe in this case[] is because of methamphetamine. It destroys . . . individual lives, it destroys families, it can destroy communities." App., Vol. IV at 15.

In 2015, after the Sentencing Commission amended the Guidelines and reduced the applicable guidelines for this type of crime, Chavez-Meza filed a pro se motion under 18 U.S.C. § 3582(c)(2), asking the district court to modify his sentence.

The district court appointed counsel to represent Chavez-Meza, and the government consented to a "stipulated agreement in petition for reduced sentence." App., Vol. I at 40–41. In the petition they agreed that amendments to the guidelines range resulted in a lower 108- to 135-month sentencing range. Accordingly, Chavez-Meza filed a request for a 108-month sentence, at the low end of the revised range. The government did not offer guidance on a specific sentence.

There is no requirement that district courts hold a hearing in a § 3582(c)(2) sentence-reduction proceeding. *United States v. Piper*, 839 F.3d 1261, 1270 (10th Cir. 2016). Without doing so, then, the district court issued an order on a two-page standard form reducing Chavez-Meza's sentence to 114 months. The form, an "AO-247," is a document prepared by the Federal

Judiciary's Administrative Office. It requires the district court to state it has "tak[en] into account the policy statement set forth at USSG § 1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable." It also requires the court provide both the previous and amended total offense level, criminal history category, and guidelines range. The court must then check a box indicating where the sentence falls relative to the amended guidelines range. Apart from completing the form, the district court did not otherwise explain its decision to reduce the sentence to 114 months rather than the 108 months Chavez-Meza had requested.

II. Analysis

Chavez-Meza contends the district court erred by failing to adequately state reasons supporting its decision in the sentence-reduction order. He argues mere completion of an AO-247 makes it impossible to determine whether the district court complied with § 3582(c), which requires that courts consider the § 3553(a) sentencing factors. The government argues § 3582(c) does not require that courts state specific reasons for imposing a particular sentence, but only that courts consider the applicable § 3553(a) factors.

We review the scope of a district court's authority in sentence reduction under 18 U.S.C. § 3582(c)(2) de novo. *United States v. Verdin-Garcia*, 824 F.3d 1218, 1221 (10th Cir. 2016). We review a district court's decision to grant or deny a § 3582(c)(2) motion for an abuse of discretion. *Id.* An error of law is per se an abuse of discretion. *Koon v. United States*, 518 U.S. 81, 100 (1996).

Section 3582(c)(2) authorizes a district court to reduce a sentence "based on a sentencing range that

has subsequently been lowered by the Sentencing Commission." The statute provides that "the court *may* reduce the term of imprisonment, after *considering* the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." *Id.* (emphasis added).

We have explained in previous cases that the plain language of § 3582(c)(2) *does not* incorporate the explanatory requirement from § 3553(c):

> The language of 18 U.S.C. § 3582(c)(2) is clear—it requires the court to *consider* the factors in 18 U.S.C. § 3553(a). It does not mention § 3553(c). This omission is significant because we have previously interpreted the meaning of both subsections, holding that § 3553(a) requires consideration, while § 3553(c) requires an explanation of the sentence. Congress incorporated only one of these distinct requirements into § 3582(c)(2)—the requirement to consider the § 3553(a) factors.

Verdin-Garcia, 824 F.3d at 1221 (citing *United States v. Ruiz-Terrazas*, 477 F.3d 1196, 1201 (10th Cir. 2007)). Thus, the statute in referencing § 3553(a) imposes no particular requirement to provide the level of explanation § 3553(c) requires. Rather, "[s]ection 3553(a) imposes on the district court a duty to '*consider*'" a variety of important sentencing considerations. *Ruiz-Terrazas*, 477 F.3d at 1201. But it nowhere imposes on the court a duty to address those factors on the record; by contrast, § 3553(c) speaks expressly to the nature of the district court's duty to explain itself on the record. It would be incongruous, we think, to read a duty of explanation into subsection (a) when the exact

matter has already been considered and addressed by Congress in subsection (c).

We have also explained that the requirements imposed on a court at a sentence-reduction proceeding cannot be greater than those imposed at an original sentencing proceeding. *Verdin-Garcia*, 824 F.3d at 1221. This distinction reflects the different status of the two proceedings. Original sentencing proceedings invoke important constitutional rights, and § 3553(c) requires sentencing courts to explain and justify a particular sentence, both for procedural and substantive reasonableness. But no statute or case has established this requirement for sentence-reduction proceedings—which makes sense. Sentence-reduction proceedings merely represent "a congressional act of lenity intended to give prisoners the benefit of later enacted adjustments." *Dillon v. United States*, 560 U.S. 817, 828 (2010). Setting the procedural bar for sentence-reduction proceedings higher than for original sentencing proceedings would contravene this hierarchy. We cannot require more for sentence reduction, when § 3553(c) does not apply, than we require for original sentencing, when § 3553(c) does apply. The original sentencing procedures required by § 3553(c) must therefore supply the ceiling for sentence-reduction procedures.

So we begin by reviewing what § 3553(c) requires. We do so not because § 3553(c) applies to sentence reduction, but because the requirements for sentence reduction cannot exceed the requirements of § 3553(c). Congress's decision not to incorporate § 3553(c) into the sentence-reduction provision dictates this approach. Our precedent on § 3553(c) does not tell us what sentence reduction requires, but it tells us the uppermost bound of what it can require.

And that precedent makes clear that original sentencing proceedings do not require extensive explanations for sentences within the guidelines range. "When imposing a sentence within the properly calculated Guidelines range, a district court must provide, as Section 3553(c) indicates by its plain language, only a general statement noting the appropriate guideline range and how it was calculated." *United States v. Ruiz-Terrazas*, 477 F.3d 1196, 1202 (10th Cir. 2007 (internal quotation marks omitted).[1] A court's "citation of the [presentence report's] calculation method and recitation of the suggested imprisonment range amply fulfill[s]" this requirement. *United States v. Algarate-Valencia*, 550 F.3d 1238, 1244 (10th Cir. 2008) (quoting *United States v. Cereceres-Zavala*, 499 F.3d 1211, 1217 (10th Cir. 2007)). "Section 3553(a) imposes on the district court a duty to 'consider' a variety of important sentencing considerations. But it nowhere imposes on the court a duty to address

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[1] More is required at sentencing when the defendant requests a below-guidelines sentence. *See United States v. Sanchez-Juarez*, 446 F.3d 1109, 1117 (10th Cir. 2006) ("[W]here a defendant has raised a nonfrivolous argument that the § 3553(a) factors warrant a below-Guideline sentence and has expressly requested such a sentence, we must be able to discern from the record that the sentencing judge did not rest on the guidelines alone, but considered whether the guidelines sentence actually conforms, in the circumstances, to the statutory factors." (internal quotation marks and alterations omitted)). But that situation is not raised on these facts. Courts can only reduce a sentence to a term less than the guidelines minimum if the sentencing court originally imposed a sentence below the guidelines range. USSG § 1B1.10(b)(2). We do not decide in this case what level of explanation is required when courts decide sentence-reduction motions involving sentences outside the guidelines range.

those factors on the record." *Ruiz-Terrazas*, 477 F.3d at 1201.

Read together, *Verdin-Garcia* and *Ruiz-Terrazas* thus establish that the same "general statement noting the appropriate guideline range and how it was calculated" in applying § 3553(a) also suffices in sentence-reduction proceedings. *Ruiz-Terrazas* confirms that level of explanation satisfies the requirements for sentencing proceedings, and *Verdin-Garcia* clarifies that it provides the ceiling for sentence-reduction proceedings. A contrary rule would go beyond what we have said § 3553(c) requires, thus imposing greater requirements for what both Congress and the Supreme Court have told us is a lesser proceeding—and one to which § 3553(c) does not even apply. We therefore hold that, absent any indication the court failed to consider the § 3553(a) factors, a district court completing form AO-247 need not explain choosing a particular guidelines-range sentence.[2]

This makes sense given our review of sentencing decisions. We "traditionally presume, absent some indication in the record suggesting otherwise, that trial judges are presumed to know the law and apply it in making their decisions." *Ruiz-Terrazas*, 477 F.3d at 1201 (alterations and quotation marks omitted). We "do not disturb decisions entrusted by statute or other rule of law to the discretion of a district court unless we have a definite and firm conviction that the lower

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[2] We do not address here whether a district court must justify *rejecting* a sentence-reduction motion. Some courts considering the issue have imposed higher explanatory standards for denying sentence-reduction motions than for granting one but with a longer sentence than the movant sought. *See United States v. Brown*, 497 F. App'x. 196, 198 (3d Cir. 2012) (unpublished); *United States v. Evans*, 587 F.3d 667, 674 (5th Cir. 2009).

court made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances." *Id.* (quotation marks omitted).

Nothing indicates in this case the district court failed to consider the § 3553(a) factors or otherwise abused its discretion. The first page of form AO-247, signed by the judge, indicates that he has "tak[en] into account the policy statement set forth at USSG § 1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a)." App., Vol. 1 at 42. The (sealed) second page of form AO-247 correctly indicates the amended guidelines range. And it is safe to infer from the court's rejection of the low-end-of-the-range sentence that it carefully considered the materials (which included an incident of misconduct while in prison) presented to it by the parties.

The circuits are split on the degree of explanation necessary to satisfy § 3582. The First, Third, and Fourth Circuits, for example, have all held that no elaborate explanation is necessary in § 3582 sentence-reduction proceedings. *See United States v. Zayas-Ortiz*, 808 F.3d 520, 524 (1st Cir. 2015) (affirming unelaborated AO-247 order where "the record as a whole is sufficient for [the court of appeals] to infer the pertinent factors taken into account by the court below"); *United States v. Brown*, 497 F. App'x 196, 198–99 (3d Cir. 2012) (unpublished) (affirming unelaborated AO-247 order where "[t]he record shows the District Court's consideration of the relevant factors and the rationale for its § 3582(c)(2) ruling"); *United States v. Smalls*, 720 F.3d 193, 195–96 (4th Cir. 2013) ("[A]bsent a contrary indication, [the court of appeals] presume[s] a district court deciding a § 3582(c)(2) motion has considered the 18 U.S.C. § 3553(a) factors and other pertinent matters before

it." (internal quotation marks omitted)). On the other hand, several other circuits have found an explanatory requirement in this context. *See United States v. Christie*, 736 F.3d 191, 195 (2d Cir. 2013) ("[T]he lack of reasoning in the court's order prevents [the court of appeals] from exercising meaningful appellate review." (internal quotation marks omitted)); *see also United States v. Howard*, 644 F.3d 455, 461 (6th Cir. 2011); *United States v. Marion*, 590 F.3d 475, 478 (7th Cir. 2009); *United States v. Burrell*, 622 F.3d 961, 964 (8th Cir. 2010); *United States v. Trujillo*, 713 F.3d 1003, 1009 (9th Cir. 2013); *United States v. Williams*, 557 F.3d 1254, 1256-57 (11th Cir. 2009) (all same).

Chavez-Meza relies on these authorities and also points to two Tenth Circuit cases in arguing for a contrary result. In the first case, *United States v. Dorrough*, 84 F.3d 1309, 1311 (10th Cir. 1996), we stated in dicta that "[t]here is no requirement that the district court make specific findings regarding [the 18 U.S.C. § 3553(a) factors in sentence-reduction orders] as long as it states the reasons for its actions." The other case, *United States v. Nelson*, 303 F. App'x 641 (10th Cir. 2008), an unpublished decision that relies on *Dorrough*, remanded an AO-247 order that lacked any explanation, explaining "we lack a meaningful basis for reviewing the district court's consideration of the relevant factors." *Id.* at 646. But dicta and unpublished opinions do not bind panels of this court. *See* 10th Cir. R. 32.1(A) ("Unpublished decisions are not precedential, but may be cited for their persuasive value."); *Bates v. Dep't of Corr.*, 81 F.3d 1008, 1011 (10th Cir. 1996) ("[A] panel of this [c]ourt . . . is not bound by a prior panel's dicta."). We nonetheless are persuaded that § 3582 does not require more explanation than was provided here.

First, *Dorrough* and *Nelson* ultimately locate the source of the explanatory requirement in § 3553(c),[3] but, as we explained in *Verdin-Garcia*, § 3582(c) plainly does not incorporate that requirement. *See Verdin-Garcia*, 824 F.3d at 1221 ("§ 3582(c)(2) . . . does not mention § 3553(c)."). Although *Nelson* states that § 3582(c)(2) "require[s]" a district court "to state the reasons for its decision," 303 F. App'x at 646, § 3582(c)(2) only directs courts to *consider* the § 3553(a) factors. Nowhere does the language of § 3582(c)(2) include, reference, or incorporate the explanatory requirement of § 3553(c). *Verdin-Garcia*, 824 F.3d at 1221. *Nelson*'s statement that § 3582(c)(2) requires a statement of reasons is unpersuasive for that reason.

Second, *Dorrough* and *Nelson* are inconsistent with our cases on sentencing, which provide a ceiling for the requirements in sentence-reduction proceedings. If a sentencing court does not need to explain the reasons behind a within-guidelines sentence, the standard cannot be higher for sentence reduction. Following *Nelson*'s approach would create a more stringent standard for sentence-reduction proceedings than for original sentencing proceedings. Had Congress wished to include an explanatory requirement in the sentence-reduction provision, as they did in § 3553(c), they could have done so. But "courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 461–62 (2002).

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[3] *Dorrough* gets to § 3553(c) in two steps. As authority for its dictum, *Dorrough* cited *United States v. Lee*, 957 F.2d 770, 774–75 (10th Cir. 1992), a case about supervised release that cites § 3553(c) as authority for a similar dictum. *Nelson* cites *Dorrough*, so it too ultimately derives its holding from § 3553(c). *Nelson*, 303 F. App'x at 645.

The rule of *Nelson* might be good practice for the district courts, and reviewing courts might benefit in some circumstances from additional explanation, but as we explained, neither the text of the statute nor our precedent *require* additional explanation. Even though district courts *need not* explain their decisions in sentence-reduction orders, that does not mean that they *should not* do so. In *Verdin-Garcia*, we announced a "[g]eneral [p]olicy [s]upporting [e]xplanation," in light of "the need for a district court to create a meaningful basis for appellate review and to promote the perception of fairness." 824 F.3d at 1222. As the First Circuit noted in a similar case, "[e]ven a single sentence incorporating the government's or probation officer's position might have spared this case a trip to the [court of appeals] and all the attendant effort and expense associated therewith." *Zayas-Ortiz*, 808 F.3d at 525. But the standard of review is abuse of discretion, not best practice. In the absence of an explanatory requirement, we do not find that the district court abused its discretion.

III. Conclusion

We therefore **AFFIRM** the district court's order reducing Chavez-Meza's sentence to 114 months.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

April 14, 2017

Elisabeth A. Shumaker
Clerk of Court

No. 16-2062
(D.C. No. 1:12-CR-00701-WJ-1)
(D. N.M.)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ADAUCTO CHAVEZ-MEZA,

Defendant-Appellant.

JUDGMENT

Before **TYMKOVICH**, Chief Judge, **SEYMOUR**, and **KELLY**, Circuit Judges.

This case originated in the District of New Mexico and was submitted on the briefs at the direction of the court.

The judgment of that court is affirmed.

If defendant, Adaucto Chavez-Meza was released pending appeal, the court further orders that, within

30 days from the filing of the mandate of this court in the District Court, the defendant shall surrender to the United States Marshal for the District of Mexico in execution of the judgment and sentence imposed; however, the District Court, in its discretion, may permit the defendant to surrender directly to a designated Bureau of Prisons institution for service of sentence.

Entered for the Court

/s/ Elisabeth A. Shumaker
ELISABETH A. SHUMAKER, Clerk

No. 17-5639

IN THE

Supreme Court of the United States

ADAUCTO CHAVEZ-MEZA,

Petitioner,

v.

UNITED STATES,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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February 26, 2018

QUESTION PRESENTED

Whether, when a district court decides not to grant a proportional sentence reduction under 18 U.S.C. § 3582(c)(2), it must provide some explanation for its decision when the reasons are not otherwise apparent from the record, as the U.S. Courts of Appeals for the 6th, 8th, 9th and 11th Circuits have held, or whether it can issue its decision without any explanation so long as it is issued on a preprinted form order containing boilerplate language providing that the court has "tak[en] into account the policy statement set forth in 18 U.S.S.G. § 1B1.10 and the sentencing factors set forth in U.S.C. § 3553(a), to the extent that they are applicable," as the U.S. Courts of Appeals for the 4th, 5th and 10th Circuits have held.

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The opinion of the United States Court of Appeals for the Tenth Circuit is reprinted in the Joint Appendix (J.A.) at J.A. 49-60. It also is available at 854 F.3d 655 (10th Cir. 2017). The AO 247 Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2) of the United States District Court for the District of New Mexico is reproduced at Sealed J.A. 106-108.

JURISDICTION

The United States Court of Appeals for the Tenth Circuit entered its judgment on April 14, 2017, see J.A. 49. The petition for a writ of certiorari was filed on August 14, 2017, and granted on January 12, 2018.

STATUTORY PROVISIONS INVOLVED

The relevant statutes and provisions of the United States Sentencing Guidelines are reprinted in an appendix to this brief. App., *infra*, 1a-13a.

STATEMENT OF THE CASE

This case concerns the level of explanation a district court must include in an order reducing a criminal defendant's sentence pursuant to a retroactive amendment to the Sentencing Guidelines, when the reduced sentence is disproportionate to where the original sentence fell within the applicable guideline range. This Court should hold, consistent with the majority of the circuits that have passed on the question, that the district court must offer sufficient explanation to enable meaningful appellate review. Here, the district court provided no explanation when it refused to grant Petitioner Adaucto Chavez-Meza a

full reduction. The court's failure to state which relevant factors it considered and how it weighed them rendered the appellate tribunal's review an empty formality.

Statutory background

A criminal sentence generally is presumed final after the opportunity for direct review comes to an end. See *Brecht* v. *Abrahamson*, 507 U.S. 619, 633 (1993); 18 U.S.C. § 3582(c) ("The court may not modify a term of imprisonment once it has been imposed . . . ."). Congress, however, "has the power to fix the sentence for a federal crime, and the scope of judicial discretion with respect to a sentence is subject to congressional control." *Mistretta* v. *United States*, 488 U.S. 361, 364 (1989) (citation omitted). Through the Sentencing Reform Act of 1984, (the "SRA"), Pub. L. No. 98-473, 98 Stat. 1987, Congress enacted a limited exception to the general rule of finality, allowing a district court to modify an otherwise final sentence but setting parameters on how the district court is to exercise that discretion.

Section 3582(c) provides that,

> in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(*o*), upon motion of the defendant . . ., the court may reduce the term of imprisonment after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

§ 3582(c)(2). The applicable policy statement is found at U.S. Sentencing Guidelines Manual § 1B1.10 (U.S.

Sentencing Comm'n 2016) ("U.S.S.G"), which effectuates Congress's intent by allowing district courts to reduce the sentence of a defendant whose sentence was based on a guideline range subsequently amended by the Sentencing Commission. See *Dillon* v. *United States*, 560 U.S. 817, 831 (2010) (discussing how § 3582(c)(2) "permits a sentence reduction within the narrow bounds established by the Commission"); 28 U.S.C. § 994(u) ("If the Commission reduces the term of imprisonment recommended in the guidelines . . . , it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment . . . may be reduced.").

In sum, Congress has authorized a district court in limited situations to reduce a defendant's term of imprisonment after the sentence is otherwise final. This "congressional act of lenity [is] intended to give prisoners the benefit of later enacted adjustments to the judgments reflected in the Guidelines." *Dillon*, 560 U.S. at 828.

Factual background

Without entering a plea agreement, Mr. Chavez-Meza pled guilty to a two-count indictment charging him with conspiracy and possession with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846. J.A. 29. Using the 2012 version of the Guidelines Manual in effect at the time of sentencing, the United States Probation Office ("Probation") calculated Mr. Chavez-Meza's total offense level to be 33. Sealed J.A. 80. Because Mr. Chavez-Meza had no prior convictions, he had no criminal history points, placing him in criminal history category I. *Id.* at 80-81. Probation accordingly determined Mr. Chavez-Meza's guideline sentencing range to be a term of imprisonment between

135 and 168 months. *Id.* at 87. Neither party objected to the guideline range calculations.

Mr. Chavez-Meza, without requesting any specific sentence, asked the district court to vary below the advisory guideline range. J.A. 20-22. The government requested a sentence at the low end of the range, i.e., to a term of 135 months. *Id.* at 20-21. The court accepted the government's position and sentenced Mr. Chavez-Meza to an aggregate 135-month term of imprisonment. *Id.* at 26. The court made clear that the chosen sentence was driven by the Guidelines when it stated that "the reason the guideline sentence is high in this case, even the low end of 135 months, is because of the quantity, 1.75 kilograms of actual methamphetamine," and because methamphetamine destroys lives, families, and communities. *Id.* at 25.

The Commission subsequently issued Amendment 782 to the Guidelines, which became effective on November 1, 2014. U.S.S.G. app. C, amend. 782. Amendment 782, commonly referred to as the "drugs minus two" amendment, generally lowered by two points the base offense levels found in the drug quantity table at U.S.S.G. § 2D1.1(c). The Commission made this amendment retroactive. U.S.S.G. app. C, amend. 788, supp. at 86.

After the issuance of Amendment 782, Mr. Chavez-Meza filed a pro se motion to reduce his sentence under § 3582(c)(2). J.A. 38-41. Probation prepared a memorandum in which it determined that Amendment 782 reduced Mr. Chavez-Meza's guideline range from 135 to 168 months to 108 to 135 months. Sealed J.A. 63-64. In the memorandum, Probation noted that, since being imprisoned, Mr. Chavez-Meza had completed educational courses in masonry, construction, and healthy living; he was enrolled in GED classes; and had been assigned work duties. The memo-

randum also noted that Mr. Chavez-Meza was trying to enroll in a non-residential drug treatment program and had received one minor disciplinary sanction for using another inmate's phone number. *Id.* at 64-65.

Through appointed counsel, Mr. Chavez-Meza and the government stipulated that Mr. Chavez-Meza was eligible for a reduction. J.A. 42-44. Pointing out that the district court at sentencing had stated that his sentence was driven by the type and quantity of drugs at issue in his case, Mr. Chavez-Meza asked the district court to reduce his sentence to the low end of the amended guideline range, i.e., to 108 months. *Id.* at 43. Such a reduced sentence would have been proportional to where his original sentence fell within the non-amended guideline range. The government did not take a position as to what the reduced sentence should be.

The district court, without holding a hearing, granted Mr. Chavez-Meza's motion, but only in part. Rather than proportionally reducing Mr. Chavez-Meza's sentence to 108 months, the district court reduced his sentence to 114 months. *Id.* at 46. The court provided no explanation for the sentence it chose. Instead, it simply typed in the new sentence after checking the "GRANTED" box on an AO-247 Form, a form order issued by the Administrative Office of the United States Courts. *Id.* at 46. Although the form contained preprinted boilerplate language providing that the court had considered the motion and "tak[en] into account the policy statement set forth at U.S.S.G. § 1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable," the district court did not provide any explanation on the form order – including in the space for "additional comments" on the second page (filed under seal) – as to why it only was reducing Mr.

Chavez-Meza's sentence to 114 months, and not to 108 months. Sealed J.A. 106-108.

Appellate Review

On appeal to the Tenth Circuit, Mr. Chavez-Meza asserted that the district court had abused its discretion when it failed to provide any reason for declining to reduce his sentence proportionally to 108 months. Relying on that court's unpublished decision of *United States* v. *Nelson*, 303 F. App'x 641 (10th Cir. 2008), and Judge Ebel's concurring opinion in *United States* v. *Dorrough*, 84 F.3d 1309 (10th Cir. 1996), as well as several cases in other circuits, Mr. Chavez-Meza maintained that it was impossible to determine which factors the district court had considered and whether it relied on impermissible factors. J.A. 58. While recognizing that some courts have held it unnecessary for a district court to state its reasons when they are readily apparent from the record, Mr. Chavez-Meza distinguished those cases. Defendant-Appellant's Opening Brief at 9-11, *Chavez-Meza* v. *United States* (No. 16-2062) (10th Cir. June 16, 2016).

The Tenth Circuit affirmed. J.A. 49-62. The court first looked to 18 U.S.C. § 3553(c), which, *inter alia*, requires district courts to state their reasons for imposing a particular sentence at an original sentencing. Given that § 3582(c)(2) only requires district courts to "consider" the § 3553(a) factors and § 3553(a), unlike § 3553(c), does not impose a "duty of explanation" on district courts, the Tenth Circuit reasoned that § 3553(c) provides the "ceiling" for the level of explanation necessary in sentence-reduction proceedings. *Id.* at 53-54. Reading its earlier precedent as holding that "a sentencing court does not need to explain the reasons behind a within-guidelines sentence" at an original sentencing, the Tenth Circuit thus held "that, absent any indication the court failed

to consider the § 3553(a) factors, a district court completing form AO-247 need not explain choosing a particular guidelines-range sentence." *Id.* at 56. The Tenth Circuit acknowledged that its approach conflicted with that taken by multiple other circuits. *Id.* at 58.

Looking to the boilerplate form order, the court of appeals saw nothing on its face to indicate that the district court failed to consider the § 3553(a) factors, or otherwise abused its discretion. *Id.* at 57. Since the district court did not adopt Mr. Chavez-Meza's request for a proportional reduction, the court thought it "safe to infer" that the district court had carefully considered the record. *Id.* At bottom, while the Tenth Circuit thought it "might be good practice for the district courts" to explain their reasoning in sentence-reduction proceedings, the court found no abuse of discretion because Congress did not include an "explanatory requirement" for such cases. *Id.* at 60.

SUMMARY OF THE ARGUMENT

The Tenth Circuit ignored the bedrock principle, as set forth in *United States* v. *Taylor*, 487 U.S. 326 (1988), that where a statute requires district courts to consider certain factors, the court must clearly articulate how those factors affected its decision. This principle, which is predicated upon the need for meaningful appellate review, governs here because the sentence-reduction statute at issue, § 3582(c)(2), expressly requires the consideration of both the factors set forth in § 3553(a) (identifying numerous "[f]actors to be considered in imposing a sentence") as well as the applicable policy statements issued by the Sentencing Commission. The district court's lack of articulation here makes such review impossible.

This Court, in *Taylor* and elsewhere, repeatedly has emphasized that meaningful appellate review is necessary to ensure that a district court's exercise of discretion is faithful to Congress's statutory scheme and not the product of fiat, clear error, or the consideration of impermissible factors. For appellate review to be meaningful, then, a district court must provide some reasoned basis for its decision. A court merely stating that it considered the necessary factors, without any corresponding explanation as to how those factors impacted its decision, renders the idea of appellate review an empty formality.

The district court's failure to provide an explanation for denying a full reduction was particularly problematic in the context of Amendment 782. In promulgating Amendment 782, the Commission attempted to substantially reduce prison overcrowding caused by unnecessarily long sentences for drug crimes like Mr. Chavez-Meza's. The Commission predicted that sentences for approximately 46,000 prisoners would be reduced by an average of 18%, reflecting a strong expectation that district courts would grant the full reduction. All things equal, unless considerations of the § 3553(a) factors or public safety concerns required otherwise, courts were expected to take the sentence that they had originally imposed and drop it two full levels. Against this settled policy expectation, *Taylor*'s requirement that district courts articulate reasons for not providing the full reduction is all the more imperative.

The Tenth Circuit's rationale turned on the lack of an express "duty of explanation" in either § 3582(c) or § 3553(a) in comparison to § 3553(c). But Congress's express inclusion of a robust duty of explanation at original sentencings in § 3553(c) serves unique purposes and does nothing to foreclose the need for

meaningful appellate review in other contexts. Nor is the argument sound in any event because Congress's express inclusion of a duty in a different statute does not mean that Congress meant to remove entirely any requirement that a district court articulate a discernable reason for its exercise of sentencing discretion in § 3582(c)(2) proceedings.

The Court's statement in *Dillon* – that § 3582(c)(2) proceedings are of a "limited nature" – does not abrogate the need for articulation in order to effectuate meaningful appellate review. The actual holding in *Dillon* serves only to demonstrate that a district court's exercise of discretion is limited to imposing a reduced sentencing within the amended guideline range where the original sentence fell within the non-amended guideline range. Nothing in *Dillon* abrogates *Taylor* or otherwise suggests that a district court is relieved of its obligation to articulate how it exercised its discretion. While lengthy explanations, like lengthy proceedings, are unnecessary, some articulation is necessary so that appellate courts can ensure that Congress's scheme is given proper effect.

The court of appeals' decision in Mr. Chavez-Meza's case demonstrates that appellate review without the benefit of any articulation of reasons requires speculation by the appellate court and does not facilitate functional or fair review.

First, the Tenth Circuit's decision to "infer" that the district court relied upon Mr. Chavez-Meza's minor disciplinary sanction (for using another inmate's phone number) only raises more questions than it answers. The Bureau of Prisons' precise scale of infractions and appropriate punishments (which Mr. Chavez-Meza duly received) belies the speculation that the district court chose, in effect, to punish Mr. Chavez-Meza with six months of additional impris-

onment. The Tenth Circuit's speculation also fails to account for how the district court weighed the disciplinary sanction against Mr. Chavez-Meza's demonstrated efforts – through certifications and courses – at rehabilitation, and creates exactly the type of potentially unwarranted disparity that courts and the Commission are charged by Congress to avoid

Second, the Tenth Circuit wrongly grounded its decision in its apparent belief that a court, at original sentencing, never needs to explain its reasons for a within-guideline sentence. Such a position disregards this Court's admonition that all sentences are reviewed for abuse of discretion and that a district court must always provide sufficient explanation to satisfy the appellate court that it has a reasoned basis for its decision.

ARGUMENT

I. A DISTRICT COURT MUST BOTH CONSIDER AND EXPLAIN APPLICABLE SENTENCING FACTORS AND POLICY STATEMENTS IN ORDER TO MAKE MEANINGFUL APPELLATE REVIEW POSSIBLE.

A. Congress's Incorporation Of Sentencing Factors In § 3582 Requires District Courts to Articulate Reasons For Their Discretionary Choices.

In deciding this case, the Tenth Circuit ignored this Court's precedents providing that district courts are required to articulate reasons behind their exercise of discretionary authority, especially where, as here, a statute sets forth factors relevant to the exercise of that discretion. In *Taylor* for example, the Court held that, "[w]here . . . Congress has declared that a deci-

sion will be governed by consideration of particular factors, a district court must carefully consider those factors as applied to the particular case, and, whatever its decision, *clearly articulate* their effect in order to permit meaningful appellate review." 487 U.S. at 336 (emphasis added).

Taylor governs this case because § 3582(c)(2) provides that a district court may modify an otherwise-final sentence only "after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission."

As this Court explained in *Dillon*, a district court considering a sentence-reduction motion pursuant to § 3582(c)(2) must undertake a two-step analysis. A court must first determine under U.S.S.G. § 1B1.10 whether the defendant is eligible for a reduction and, if so, the extent of the reduction allowed. *Dillon*, 560 U.S. at 827. At the second step, the district court determines whether a sentence reduction is warranted in whole or in part under the particular circumstances of the case. In making this determination, the court must consider two sets of factors and may consider a third. It "shall consider" the applicable § 3553(a) factors. U.S.S.G. § 1B1.10 cmt. 1(B)(i). It also "shall consider" the potential impact the reduction would have on public safety. U.S.S.G. § 1B1.10 cmt. 1(B)(ii). And it may, but is not required to, consider the defendant's post-sentencing conduct. U.S.S.G. § 1B1.10 cmt. 1(B)(iii).

Congress, through the Commission, therefore, carefully prescribed how a district court is to exercise its discretion in modifying an otherwise final sentence. At the first step of the inquiry, "[t]he binding policy statement governing § 3582(c)(2) motions plac-

es considerable limits on district court discretion." *Freeman* v. *United States*, 564 U.S. 522, 531 (2011) (plurality opinion). And at the second step, the court's duty to consider multiple factors in determining whether the reduction is warranted gives the court only "circumscribed discretion." *Dillon*, 560 U.S. at 829.

When Congress circumscribes the discretion of a district court by requiring it to consider several factors, it implicitly requires the court to explain which factors it considered and how it weighed those factors. Without some explanation as to how the court exercised its discretion in such circumstances, the appellate tribunal is unable to determine whether congressional intent is effectuated. *Taylor*, 487 U.S. at 336.

B. Articulating Reasons For Exercising Discretion Under § 3582(c) Is Necessary For Meaningful Appellate Review.

All courts of appeals review the second step of a district court's § 3582(c)(2) decision for abuse of discretion.[1] But this "hardly means that [such decisions

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[1] *United States* v. *LaBonte*, 70 F.3d 1396, 1411 (1st Cir. 1995), *rev'd on other grounds*, 520 U.S. 751 (1997); *United States* v. *Borden*, 564 F.3d 100, 104 (2d Cir. 2009); *United States* v. *Mateo*, 560 F.3d 152, 154 (3d Cir. 2009); *United States* v. *Smalls*, 720 F.3d 193, 195 (4th Cir. 2013); *United States* v. *Pardue*, 36 F.3d 429, 430 (5th Cir. 1994) (per curiam); *United States* v. *Webb*, 760 F.3d 513, 517 (6th Cir. 2014); *United States* v. *Hall*, 582 F.3d 816, 817 (7th Cir. 2009); *United States* v. *Hernandez-Marfil*, 825 F.3d 410, 412 (8th Cir. 2016) (per curiam); *United States* v. *Dunn*, 728 F.3d 1151, 1155 (9th Cir. 2013); *United States* v. *Piper*, 839 F.3d 1261, 1265 (10th Cir. 2016), *cert. denied*, 137 S. Ct. 2263 (2017); *United States* v. *Webb*, 565 F.3d 789, 792 (11th Cir. 2009) (per curiam); *United States* v. *Kennedy*, 722 F.3d 439, 442 (D.C. Cir. 2013).

are] unfettered by meaningful standards or shielded from thorough appellate review." *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 416 (1975); see *Gall* v. *United States*, 552 U.S. 38, 72 (2007) (Alito, J., dissenting) ("[A]buse-of-discretion review is not toothless; and it is entirely proper for a reviewing court to find an abuse of discretion when important factors . . . are 'slighted.'" (quoting *Taylor*, 487 U.S. at 337)).

"Discretion is not a whim, and limiting discretion according to legal standards helps promote the basic principle of justice that like cases should be decided alike." *Martin* v. *Franklin Capital Corp.*, 546 U.S. 132, 139 (2005); see also *United States* v. *Burr*, 25 F. Cas. 30, 35 (C.C. Va. 1807) (No. 14,692D) (Marshall, C.J.) ("[A] motion to [a court's] discretion is a motion, not to its inclination, but to its judgment; and its judgment is to be guided by sound legal principles."). Appellate review for abuse of discretion, then, exists to ensure that the district court's discretionary choice was not based "on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Cooter & Gell* v. *Hartmarx Corp.*, 496 U.S. 384, 405 (1990). Ultimately, "[w]hether discretion has been abused depends, of course, on the bounds of the discretion and the principles that guide its exercise." *Taylor*, 487 U.S. at 336.

To be sure, "the district court's judgment of how opposing considerations balance should not lightly be disturbed," *Id.* at 337, but an appellate court must still "ascertain whether a district court has ignored or slighted a factor that Congress has deemed pertinent [to the decision at hand], thereby failing to act within the limits prescribed by Congress." *Id.* In such a case, a court of appeals may conclude that the district court made a mistake in balancing opposing consid-

erations. See *id.* at 338-42 (holding that district court abused its discretion under the Speedy Trial Act where it failed to consider one relevant factor, gave too little weight to a second factor, and gave too much weight to third factor).

This Court before and after *Taylor* repeatedly has reversed cases for abuse of discretion where the district court failed to articulate sufficiently how it considered the relevant factors when exercising its discretion. For example, in *Northcross* v. *Board of Education*, 412 U.S. 427 (1973) (per curiam), the Court vacated and remanded where the district court did not explain how it exercised its discretion in denying a fee award under the Emergency School Aid Act of 1972. *Id.* at 428-29. And in *Perdue* v. *Kenny A. ex rel. Winn*, 559 U.S. 542 (2010), the Court determined that a district court had abused its discretion in enhancing a fee award made pursuant to 42 U.S.C. § 1988 where it did not provide sufficient justification for its "essentially arbitrary" decision. *Id.* at 557. Because "a reasonably specific explanation" was not provided, adequate appellate review was impossible. *Id.* at 558; see also *Hensley* v. *Eckerhart*, 461 U.S. 424, 438-40 (1983) (reversing fee award where district court failed to articulate one of twelve factors deemed relevant by Congress); cf. *Piper Aircraft Co.* v. *Reyno*, 454 U.S. 235, 257-61 (1981) (reviewing district court's reasoning in dismissing case on grounds of *forum non conveniens*); *Traxler* v. *Multnomah Cty.*, 596 F.3d 1007, 1016 (9th Cir. 2010) ("It is particularly important for the district court to provide a rationale for its decision when effectuating a congressional mandate that the decision reflect certain enumerated factors." (citing *Taylor*, 487 U.S. at 336-37)).

Thus, for appellate courts to ensure that a district court in the context of a § 3582(c)(2) proceeding con-

sidered the relevant factors, did not consider any impermissible factors, and did not clearly err in weighing the relevant factors, a district court must provide *some* reasoned basis on which appellate review can turn. Otherwise, it is impossible for a reviewing court to know how the district court made its decision. Cf. *United States* v. *Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 497 (2001) (holding that court exercising its equitable discretionary power "cannot ignore the judgment of Congress deliberately expressed in legislation" (internal quotation marks omitted)); *United States* v. *Chi., M., St. P. & P. R. Co.*, 294 U.S. 499, 511 (1935) ("We must know what a decision means before the duty becomes ours to say whether it is right or wrong.").

Several courts of appeals rightly have understood and applied this fundamental principle in the context of a § 3582(c)(2) proceeding. For example, in *United States* v. *Howard*, 644 F.3d 455 (6th Cir. 2011), a case directly on point, the Sixth Circuit remanded because the district court failed to provide any explanation when it reduced a defendant's sentence disproportionately to where it fell within the non-amended guideline range. *Id.* at 460-62; see also *United States* v. *Christie*, 736 F.3d 191, 198 (2d Cir. 2013) ("[W]e lack any understanding of the reasoning underlying the district court's [§ 3582(c)(2)] decision, and accordingly are unable to determine whether that decision was within the bounds of the district court's discretion."); *United States* v. *Marion*, 590 F.3d 475, 478 (7th Cir. 2009) (remanding denial of § 3582(c)(2) motion because it was "impossible . . . to ensure that the district court did not abuse its discretion if the order shows only that the district court exercised its discretion rather than showing *how* it exercised that discretion.").

Even the Tenth Circuit acknowledges that it cannot be enough for a district court to say, in effect: "Trust me, I considered the necessary factors and my decision reflects a reasoned judgment." See *United States* v. *Fisher*, 55 F.3d 481, 487 (10th Cir. 1995) ("Judicial action is not an exercise in *ipse dixit* – the bare assertion of an individual resting not on expressed reason, but merely on the authority vested in an office."). A court's mere statement that it "considered" the relevant factors, then, without any explanation as to *how* it considered those factors renders the entire concept of appellate review meaningless, i.e., "an empty formality." *Gall*, 552 U.S. at 68 (Alito, J., dissenting).

C. Requiring Articulation In The Context Of A § 3582(c)(2) Motion Is Particularly Important Given The Purposes Of Amendment 782.

On April 30, 2014, the Commission submitted Amendment 782 to Congress. The amendment reduced by two levels the offense levels assigned to drug quantities. Amendment 782 became effective on November 1, 2014. The Commission made amendment 782 retroactive, but delayed its effective date for one year in order to allow courts and agencies in the criminal justice system time to prepare. U.S.S.G. app. C, amend. 788, supp. at 86.

Amendment 782 reflected the Commission's determination "that setting the base offense levels slightly above the mandatory minimum penalties is no longer necessary to achieve its stated purpose."[2] U.S.S.G.

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[2] The Commission had originally set the base offense levels for drug offenses to reflect "guideline ranges slightly higher than the mandatory minimum levels to permit some downward adjustments for defendants who plead guilty or otherwise cooperate with authorities." Patti B. Saris, *A Generational Shift for*

app C, amend. 782, supp. at 71 (reason for amendment 782). "The amendment was also motivated by the significant overcapacity and costs of the Federal Bureau of Prisons." *Id.* at 72; see also 28 U.S.C. § 994(g) ("The sentencing guidelines . . . shall be formulated to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons, as determined by the Commission."). In promulgating Amendment 782, "[t]he Commission carefully weighed public safety concerns and, based on past experience, existing statutory and guideline enhancements, and expert testimony, concluded that the amendment should not jeopardize public safety." U.S.S.G. app. C, amend. 782, supp. at 73. The Commission estimated that 46,000 prisoners would be affected and, based upon its expectation that eligible prisoners ordinarily would receive the full reduction, that the average sentence would be reduced by 18%. U.S.S.G. app. C, amend. 788, supp. at 86 (reason for amendment 788); Office of Res. & Data, U.S. Sentencing Comm'n, Mem. 7, 16 (May 27, 2014), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20140527_Drug_Retro_Anaysis.pdf.

Accordingly, when a district court declines, without explanation, to grant a full reduction, there is no basis for an appellate court to infer from the silent record that such a decision is consistent with the applicable § 3553(a) factors and the Commission's policy statement.

Federal Drug Sentences, 52 Am. Crim. L. Rev. 1, 6 (2015); *see* 21 U.S.C. §§ 841(b)(1)(A) and (b)(1)(B).

II. A DISTRICT COURT'S DUTY TO ARTICULATE ITS REASONING IS NOT ABROGATED BY THE LACK OF A CROSS-REFERENCE TO § 3553(c) OR THE "LIMITED NATURE" OF § 3582(c)(2) PROCEEDINGS.

A. The Duty To Articulate Is Not Abrogated By The Absence Of A Cross-Reference To § 3553(c).

The opinion below is grounded in the following syllogism: (1) § 3582(c)(2) requires district courts to consider the § 3553(a) factors; (2) § 3553(a), in turn, requires district courts to consider certain factors, but, unlike § 3553(c) does not impose a "duty of explanation"; (3) district courts, therefore have no obligation to provide any explanation as to how they exercised their discretion in a ruling on a § 3582(c)(2) motion. J.A. 53-54. This syllogism is flawed because Congress's decision not to include a cross-reference to § 3553(c) was in no way an affirmative decision to relieve district courts of their fundamental obligation to explain their discretionary choices. Put differently, it does not follow that by not explicitly referencing in § 3582(c)(2) the "duty of explanation" found at § 3553(c) that Congress intended for district courts to have unbounded discretion requiring no articulation.

At bottom, the Tenth Circuit's syllogism fails to appreciate that whenever Congress constrains district courts' discretionary choices and allows for review, the fount of the "duty to explain" lies not in explicit congressional demand, but in the fundamental need for meaningful appellate review. While Congress may impose greater procedural protections when it chooses, this does not mean that it negates the need for meaningful appellate review in other contexts. See *Burns* v. *United States*, 501 U.S. 129, 136 (1991) ("In

some cases, Congress intends silence to rule out a particular statutory application, while in others Congress' silence signifies merely an expectation that nothing more need be said in order to effectuate the relevant legislative objective.").

Section 3582(c)(2) requires district courts to "consider" the § 3553(a) factors "to the extent that they are applicable" in deciding by how much to reduce a sentence pursuant to a retroactive Guideline amendment. Section 3553(a), in turn, directs courts to "consider" a variety of factors. While it is true that § 3553(a) "nowhere imposes on the court a duty to address those factors on the record," J.A. 53, this hardly means that it is "incongruous" to expect district courts to explain in some fashion their discretionary choices sufficient to effectuate meaningful appellate review.

Congress, of course, may impose greater duties on district courts than would otherwise normally be required. This is precisely what Congress did in enacting § 3553(c) as part of the SRA to further numerous, intertwined, goals in connection with its wholesale reform of federal sentencing.

Prior to enactment of the SRA, district courts generally had no obligation to state their reasons for imposing any particular sentence. See *Dorszynski* v. *United States*, 418 U.S. 424, 440-42 (1974). This rule was grounded in the idea that, so long as a judge had unbounded discretion to sentence a defendant within a statutory range, the sentence was unreviewable on appeal. Knowing the reasons for a judge's sentence, thus, would serve no purpose. See *id.* at 441-42. But cf. *Kent* v. *United States*, 383 U.S. 541, 554 (1966) ("[T]here is no place in our system of law for reaching a result of such tremendous consequences without ceremony – without hearing, without effective assis-

tance of counsel, without a statement of reasons."). This rule, however, was not without its detractors. In his concurrence in *Dorszynski*, Justice Marshall understood that providing a statement of reasons at sentencing advances numerous salutary policies besides that of simply effectuating appellate review. These policies include, among others, assisting "correctional authorities in their handling of the prisoner after sentence," and "enhanc[ing] the legitimacy of the sentencing process as perceived by the general public." 418 U.S. at 455, 456 (Marshall, J., concurring in the judgment).

Around the same time, the Court held in numerous cases that a statement of reasons is necessary, not to effectuate appellate review, but simply to comply with due process. See *Kerry* v. *Din*, 135 S. Ct. 2128, 2144 (2015) (Breyer, J., dissenting) ("We have often held that this kind of statement, permitting an individual to understand *why* the Government acted as it did, is a fundamental element of due process." (citing cases)). It is no wonder, then, that several courts and commentators in the era before the SRA voiced concern with the fact that district courts did not need to provide any reasons as to their sentencing decisions.[3]

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[3] Judge Marvin Frankel of the U.S. District Court for the Southern District of New York, a principal champion of the SRA, see S. Rep. No. 98-225, at 37 (1983), was one of the leading critics. Marvin E. Frankel, *Criminal Sentences: Law Without Order* 40-41 (Hill & Wang 1972) ("The duty to give an account of the decision is to promote thought by the decider, to compel him to cover the relevant points, to help him eschew irrelevancies—and, finally, to make him show that these necessities have been served."); Marvin E. Frankel, *Lawlessness in Sentencing*, 41 U. Cin. L. Rev. 1, 28 (1972) (explaining that having judges explain sentencing decisions was "important for its own sake" aside from aiding appellate review). Long before the SRA, Judge Frankel proposed a "Commission for Sentencing." *Id.* at 50-54.

See, *e.g.*, *United States* v. *Cruz*, 523 F.2d 473, 476 (9th Cir. 1975) (Kennedy, J.) ("The administration of justice and the purposes of sentencing are best served when the sentencing judge states openly the factors he considers in imposing judgment.") (citing Justice Marshall's concurrence in *Dorszynski*); *United States* v. *Velazquez*, 482 F.2d 139, 142 (2d Cir. 1973) ("The judge's evaluation of the defendant may also provide some guidance to the correctional authorities in their handling of the prisoner following sentencing. Finally, publicizing the reasoned basis of a sentence may enhance its legitimacy as perceived by the general public and, hopefully, by the defendant."); cf. J.A. 54 ("Original sentencing proceedings invoke important constitutional rights . . . ."); *United States* v. *Salerno*, 481 U.S. 739, 751-52 (1987) (holding Bail Reform Act survived facial procedural due process challenge because it included a provision for a written statement of reasons).

With enactment of the SRA, Congress effectuated a sea change in federal sentencing law. By incorporating in the SRA the requirement that a judge, at the time of sentencing and in open court, provide reasons for imposing such a sentence, Congress sought to address the concerns identified above. In short, § 3553(c), as part of a multi-faceted wholesale reform to federal sentencing, was intended to serve a multitude of salutary and functional purposes. See S. Rep. No. 98-225, at 60 ("The statement of reasons can be used by each participant in the Federal criminal justice system charged with reviewing or implementing a sentence.").

Thus simply because § 3582(c)(2) refers to § 3553(a), and not to § 3553(c) and its concomitant "duty of explanation," J.A. 53, does not mean, as the Tenth Circuit believes, that a district court is ab-

solved of all responsibility to provide "a reasonably specific explanation" for its actions. *Perdue*, 559 U.S. at 558. Indeed, "[c]ourts have a general duty to explain their reasoning. . . . [N]othing in *Dillon* suggests that [appellate courts] should abrogate district courts' general responsibility to provide some individualized legal reasoning." *United States* v. *Peters*, 843 F.3d 572, 582 (4th Cir. 2016) (Gregory, C.J., dissenting), *cert. denied*, 137 S. Ct. 2267 (2017).

A district court's so-called "duty of explanation" thus arises not from any statutory command, but from the longstanding principle that district courts must provide sufficient explanation for their discretionary decisions in order to allow for meaningful appellate review – particularly where Congress has specifically identified factors that district courts are to consider. Indeed, the Court in *Taylor* required a sufficient explanation for the district court's decision even though the Speedy Trial Act has no statutory provision akin to § 3553(c). See 487 U.S. at 336-37. Similarly, *Perdue* required district courts to sufficiently explain a fee award, even though no such provision is found in 42 U.S.C. § 1988. 559 U.S. at 558; see also *Northcross*, 412 U.S. at 428-29 (vacating and remanding where court did not explain how it exercised its discretion in denying fee award under Emergency School Aid Act of 1972). The simple reason these cases were remanded was because, like here, the lower courts insufficiently explained *how* they exercised their discretion. Absent such explanation, meaningful appellate review is impossible.[4]

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[4] A similar situation is found in the context of a district court denying a defendant's motion for early termination of supervised release pursuant to 18 U.S.C. § 3583(e). Like § 3582(c)(2), § 3583(e) does not refer to § 3553(c) or otherwise impose a "duty of explanation." Yet as the D.C. Circuit correctly understands,

B. The "Limited Nature" Of § 3582(c)(2) Proceedings Does Not Abrogate The Need For Meaningful Appellate Review.

In opposing certiorari, the Solicitor General relied upon language found in *Dillon* to support the position that district courts are relieved of their obligation to articulate the rationale underlying their discretionary choices in ruling on a § 3582(c)(2) motion. See Brief in Opposition at 14-15, *Chavez-Meza* v. *United States* (No. 17-5639) (U.S. Nov. 17, 2017); see also *United States* v. *Smalls*, 720 F.3d 193, 198 (4th Cir. 2013). But this misreads *Dillon*, as nothing in that case can be read for the proposition that district courts have unlimited and unreviewable discretion when exercising power Congress granted to them in § 3582(c)(2).

In *Dillon*, the issue was whether, after *United States* v. *Booker*, 543 U.S. 220 (2005), district courts had the discretion to reduce a term of imprisonment below the minimum of the amended guideline range when the original sentence, itself, did not fall below the guideline range. *Dillon*, 560 U.S. at 819. In holding that *Booker* did not apply to § 3582(c)(2), the Court described sentence-reduction proceedings as "limited" in nature and "not constitutionally compelled." *Id.* at 827, 828. Seizing on this language, some have held that district courts do not need, like they would at an original sentencing, to provide any

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absent explanation or where "clear and compelling reasons to deny relief leap out from the record," appellate courts "cannot just reflexively presume that the learned judge appropriately exercised his discretion and considered all of the relevant factors, because that would risk turning abuse of discretion review into merely a rubber stamp." *United States* v. *Mathis-Gardner*, 783 F.3d 1286, 1288-89 (D.C. Cir. 2015) (internal quotation marks omitted).

explanation for a ruling on a sentence-reduction motion. See *Smalls*, 720 F.3d at 198.

But *Dillon* did nothing more than affirm Congress's power to constrain judicial discretion. See 560 U.S. at 829 (explaining how § 3582(c)(2) proceedings "give judges . . . circumscribed discretion"). *Dillon* did not alter the fact that district courts must consider certain factors when deciding whether, and by how much, to reduce a sentence pursuant to a retroactive guideline amendment. See U.S.S.G. § 1B1.10 cmt. 1(B)(i)-(ii). Indeed, *Dillon* affirmed that Congress, through the Commission, has ultimate authority to "determin[e] in what circumstances and by what amount the sentences of prisoners affected by Guidelines amendments may be reduced." 560 U.S. at 830 (internal quotation marks omitted); see also *id.* at 825 (explaining that § 3582(c)(2) "give[s] courts the power to reduce an otherwise final sentence *in circumstances* specified by the Commission" (internal quotation marks omitted and emphasis added)). See also *Taylor*, 487 U.S. at 336.

In short, nothing in *Dillon* relieved district courts of their obligation to provide sufficient explanation of their discretionary choices so as to allow for meaningful appellate review. If anything, the case instead affirmed that when Congress imbues a district court with discretionary power, appellate review exists to ensure that the district court acted within bounds established by Congress. Requiring district courts to explain their decision in a § 3582(c)(2) proceeding is, in effect, no different than requiring them to explain their original sentencing decision. While § 3582(c)(2) may "not authorize a sentencing or resentencing proceeding," *Dillon*, 560 U.S. at 825, the end result of a § 3582(c)(2) proceeding is that a sentence is still imposed. See *id.* at 827 (explaining that "[o]nly if the

sentencing court originally imposed a term of imprisonment below the Guidelines range does § 1B1.10 authorize a court proceeding under § 3582(c)(2) to impose a term comparably below the amended range" (internal quotation marks omitted)).

As a plurality of this Court acknowledged in *Freeman*, all sentences – including sentences reduced pursuant to § 3582(c)(2) – are reviewed for abuse of discretion. 564 U.S. at 532 (citing *Gall*, 552 U.S. at 49); see also *United States* v. *Lafayette*, 585 F.3d 435, 439 (D.C. Cir. 2009) ("Because section 3582(c)(2) unambiguously grants discretionary authority to the district court . . . we follow the familiar standard for review of sentencing decisions . . . ."). A district court ruling on a § 3582(c)(2) motion, then, "should set forth enough to satisfy the appellate court that he has considered the parties' arguments *and* has a reasoned basis for exercising his own legal decisionmaking authority." *Rita* v. *United States*, 551 U.S. 338, 356 (2007) (emphasis added) (citing *Taylor*, 487 U.S. at 336-37); see also *Gall*, 552 U.S. at 50 ("After settling on the appropriate sentence, he must adequately explain the chosen sentence to allow for meaningful appellate review . . . ."). While lengthy explanation ordinarily will not be necessary, "[t]he touchstone of reasonableness is whether the record as a whole reflects rational and meaningful consideration of the factors . . . ." *United States* v. *Grier*, 475 F.3d 556, 571 (3d Cir. 2007) (en banc).

Finally it is precisely because of the "limitations" of these proceedings that some explanation for denying a full reduction is all the more necessary. Unlike original sentencing proceedings, defendants do not have the right to a hearing or counsel in § 3582(c)(2) proceedings. See *United States* v. *Webb*, 565 F.3d 789, 794 (11th Cir. 2009); Fed. R. Crim. P. 43(b)(4). And,

unlike at original sentencing proceedings, the Commission's policy statements are binding on district courts in the § 3582(c)(2) context, reflecting the "substantial role Congress gave the Commission with respect to sentence-modification proceedings." *Dillon*, 560 U.S. at 826. Given the fewer procedural checks available in § 3582(c)(2) proceedings, combined with the circumscribed nature of judicial discretion in such proceedings, an explanation for denying a full reduction is the only means to ensure that the district court did not render an arbitrary decision.

III. THE COURT OF APPEALS ERRED BY SUBSTITUTING ITS OWN SPECULATION FOR A MEANINGFUL REVIEW OF THE DISTRICT COURT'S ORDER.

A. The Tenth Circuit Had To Speculate About Which Factors Were Dispositive In Mr. Chavez-Meza's Sentence Modification.

Meaningful appellate review under an abuse-of-discretion standard requires that the court of appeals not have to speculate about which factors a sentencing judge considered and how it weighed those factors in arriving at its modification decision. *Taylor*, 487 U.S. at 336-37.

In this case, it is not at all evident how the district court exercised its discretion in reducing Mr. Chavez-Meza's sentence. The reduced sentence of 114 months is not proportional to where Mr. Chavez-Meza's original sentence fell within the guideline range. The district court, consistent with the government's request, originally sentenced Mr. Chavez-Meza to 135 months, which represented the low-end of the guideline range. A proportional sentence would have resulted in a reduced sentence of 108 months, not 114 months.

Apparently relying, in part, on *United States* v. *Zayas-Ortiz*, 808 F.3d 520 (1st Cir. 2015), the Tenth Circuit below perfunctorily stated that it thought it "safe to infer" that the district court relied on the "materials" submitted by the parties (which included information about one minor incident of misconduct while in prison) to decide that it would not proportionally reduce Mr. Chavez-Meza's sentence. J.A. 57. Yet, unlike the Tenth Circuit, the court in *Zayas-Ortiz* relied not on its own review of the record to "infer" what it thought might be pertinent, but on a party's specific position supported by specific facts in the record.[5] 808 F.3d at 524.

Rather than conducting any meaningful review of the district court's decision in this case, the Tenth Circuit instead simply rationalized *post hoc* the dis-

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[5] The Tenth Circuit also cited to *Smalls*, 720 F.3d 193, and *United States* v. *Brown*, 497 F. App'x 196 (3d Cir. 2012), as cases holding "that no elaborate explanation is necessary in § 3582 sentence-reduction proceedings." J.A. 57. Similar to *Zayas-Ortiz*, however, *Brown* is inapposite and does not support the Tenth Circuit's holding that *no* explanation is necessary so long as the district court signed a form order including the provision that it had considered the relevant factors. In *Brown*, "[b]oth the original and the reduced sentences were in the middle of the applicable Guidelines ranges." 497 F. App'x at 197. Thus, because the reduced sentence "was otherwise consistent with the original sentence, which it had explained in the original sentencing hearing," it was "evident in the record" how the district court analyzed the relevant factors. *Id.* at 198. While *Smalls* did hold "that, in the absence of evidence a court neglected to consider relevant factors, the court does not err in failing to provide a full explanation for its § 3582(c)(2) decision," 720 F.3d at 196, it, too, is inapposite because it also involved a proportional sentence reduction. *Id.* at 195. That said, the Fourth Circuit has summarily extended *Smalls* to situations, like here, that involve a disproportionate reduction. *See United States* v. *Locklair*, 668 F. App'x 477, 477-78 (4th Cir. 2016) (per curiam).

trict court's decision. As the Court in *Taylor* understood, however, there are several problems with the Tenth Circuit's approach, "not the least of which is that the district court did not articulate" the reason that the appellate court "inferred." 487 U.S. at 337.

Ultimately, the court of appeals' decision to look to the record and "infer" why the district court did what it did erroneously substitutes an appellate court's speculation for a *meaningful* review of the district court's decision. See *id.* ("Because the District Court did not fully explicate its reasons . . ., we are left to speculate in response to some of the parties' arguments pro and con."); *United States* v. *Zanghi*, 209 F.3d 1201, 1204 (10th Cir. 2000) ("[W]here there is no record of the judge's decisionmaking process, our review loses its appellate character and becomes instead a post hoc assumption of the district court's responsibilities."); cf. *Liti* v. *C.I.R.*, 289 F.3d 1103, 1105 (9th Cir. 2002) ("Although we could review the record and speculate on which reasons the court below found persuasive, doing so would merely substitute our reasons for those of the Tax Court.").

While, theoretically, it is *possible* the district court thought the one disciplinary sanction significant enough to warrant, in effect, an extra six months in prison, it equally is possible that the district court relied on an entirely different factor, or set of factors, and did not even consider the disciplinary sanction. See U.S.S.G. § 1B1.10 cmt. 1(B)(iii) (providing that a district court "may" take into account the defendant's post-sentencing conduct when determining the extent of a reduction).

The Tenth Circuit's speculation raises more questions than it answers. For example, if the district court's decision not to reduce Mr. Chavez-Meza's sentence proportionally was predicated on the one inci-

dent of misconduct, then the Court somehow dismissed the weight of Mr. Chavez-Meza's documented good conduct – which included the completion of several hours of educational courses, enrollment in a GED program, being assigned work duties, and his attempts to enroll in a drug treatment program. Further, did the district court consider the fact that the Bureau of Prisons considers the misconduct in which Mr. Chavez-Meza engaged, i.e., "phone abuse" with a severity code of 397, to be a relatively minor transgression akin to being unsanitary or untidy (severity code 330), failing to stand during count (severity code 320), or smoking in an unauthorized area (severity code 332)? See Fed. Bureau of Prisons, U.S. Dep't of Justice, Inmate Discipline Program tbl. 1 at 51-52 (July 8, 2011), https://www.bop.gov/policy/progstat/5270_009.pdf.

Perhaps the district court had a blanket policy of denying full reductions to any defendant who had any type of reported discipline while in prison, no matter the severity. Yet application of such a policy to Mr. Chavez-Meza, which effectively imprisons him for an additional six months after the Bureau of Prisons already sanctioned him with the loss of phone privileges for 30 days and the loss of work privileges for 180 days (but did not see fit to forfeit any of his good time), would surely constitute an abuse of discretion. See *id.* tbl. 1 at 52-53; see also 18 U.S.C. § 4042(a)(3) (providing Bureau of Prisons with authority to discipline inmates).

Moreover, the district court's original sentence of Mr. Chavez-Meza was grounded solely in the Guidelines, i.e., by the weight and type of drug underlying Mr. Chavez-Meza's convictions, and the Government specifically requested a sentence at the bottom of the guidelines ranges. Since the Commission saw fit to

retroactively reduce the punishment for the crimes for which Mr. Chavez-Meza was convicted, wouldn't an effective six-month term of imprisonment for one relatively minor transgression while incarcerated undermine the SRA's goals of uniformity in sentencing? See *Freeman*, 564 U.S. at 533 ("Section 3582(c)(2) contributes to that goal by ensuring that district courts may adjust sentences imposed pursuant to a range that the Commission concludes are too severe, out of step with the seriousness of the crime and the sentencing ranges of analogous offenses, and inconsistent with the Act's purposes."); *Dillon*, 560 U.S. at 828 (discussing how § 3582(c)(2) is "intended to give prisoners the benefit of later enacted adjustments to the judgments reflected in the Guidelines."); 28 U.S.C. § 991(b)(1)(B) (providing that purpose of the Commission is to, *inter alia*, "avoid[] unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct"); cf. *Kimbrough* v. *United States*, 552 U.S. 85, 109-110 (2007) (discussing disparity between within-guideline range sentences for crack and powder cocaine offenses); *United States* v. *Reyes-Hernandez*, 624 F.3d 405, 421-22 (7th Cir. 2010) (applying *Kimbrough* and holding that district courts may consider whether the absence of fast-track programs in immigration cases create unwarranted sentencing disparities).

The issues above go to the heart of whether the district court abused its discretion – questions that Mr. Chavez-Meza could have asserted on appeal had the district court actually reasoned as the court below speculated that it did. The fact is, neither Mr. Chavez-Meza, nor the Tenth Circuit, nor this Court knows why the district court reduced Mr. Chavez-Meza's sentence disproportionately to where his orig-

inal sentence fell within the guideline range. It thus is impossible on review to determine whether it "ignored or slighted a factor that Congress . . . deemed pertinent." *Taylor*, 487 U.S. at 337.

B. The Duty To Provide Enough Explanation To Enable Meaningful Appellate Review Under An Abuse Of Discretion Standard Is Not Abrogated When Defendants Receive A Within-Guidelines Sentence Modification.

Finally, the opinion below grounded its decision in the unsupported statement that "a sentencing court does not need to explain the reasons behind a within-guidelines sentence." J.A. 59. But this cannot be so. As the Court made clear in *Gall*, "[r]egardless of whether the sentence imposed is inside or outside the Guidelines range, the appellate court must review the sentence under an abuse-of-discretion standard." 552 U.S. at 51. At bottom, this "standard directs appellate courts to evaluate what motivated the district judge's individualized sentencing decision." *Rita*, 551 U.S. at 364 (Stevens, J., concurring). Although a within-guidelines sentence "will not necessarily require lengthy explanation," "[t]he sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decisionmaking authority." *Id.* at 356 (majority opinion) (citing *Taylor*, 487 U.S. at 336-37); see also, *e.g.*, *United States* v. *Washington*, 739 F.3d 1080, 1082 (7th Cir. 2014) (remanding for explanation of sentence at low end of guideline range because sentencing courts are "required to provide *some* explanation for the sentence imposed beyond a rote and summary invocation of the § 3553(a) factors"); *United States* v. *Carey*, 589 F.3d 187, 195 (5th Cir. 2009) ("Within-guidelines sen-

tences require an explanation that allows for meaningful appellate review and the perception of fair sentencing.").

The court of appeals' overly-broad claim that a district court does not need to explain why it chose a particular sentence within a guideline range appears to have been derived from its reading of the earlier case of *United States* v. *Ruiz-Terrazas*, 477 F.3d 1196 (10th Cir. 2007), which relied heavily on § 3553(c) for its analysis. See J.A. 53, 55 ("'When imposing a sentence within the properly calculated Guidelines range, a district court must provide as Section 3553(c) indicates by its plain language, only a general statement noting the appropriate guideline range and how it was calculated'" (quoting *Ruiz-Terrazas*, 477 F.3d at 1202)). Contra *United States* v. *Sanchez-Juarez*, 446 F.3d 1109, 1117 (10th Cir. 2006) ("We are . . . persuaded that our pre-*Booker* requirement that district courts provide sufficient reasons to allow meaningful appellate review of their discretionary sentencing decisions continues to apply in the post-*Booker* context."). However, to the extent that *Ruiz-Terrazas* can be read, as the court below apparently believed, for the proposition that a district court never needs to provide reasons for sentencing a defendant to a within-guideline range sentence, that case predated both *Rita* and *Gall*, and is no longer good law. See *Ruiz-Terrazas*, 477 F.3d at 1203 (recognizing that *Rita* was pending before the Court).

CONCLUSION

For the foregoing reasons, the Court should reverse the judgment below.

Respectfully submitted,

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APPENDIX

STATUTORY & GUIDELINE APPENDIX

18 U.S.C. § 3553 – Imposition of a Sentence

(a) Factors To Be Considered in Imposing a Sentence.—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for—

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.[1]

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

* * * *

(c) Statement of Reasons for Imposing a Sentence.—The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence—

(1) is of the kind, and within the range, described in subsection (a)(4), and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or

(2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in a statement of reasons form issued under section 994(w)(1)(B) of title 28, except to the extent that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32 the court shall state that such statements were so received and that it relied upon the content of such statements.

If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public rec-

ord of the court's statement of reasons, together with the order of judgment and commitment, to the Probation System and to the Sentencing Commission,,[3] and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

* * * *

18 U.S.C. § 3582 – Imposition of a sentence of imprisonment

(a) Factors To Be Considered in Imposing a Term of Imprisonment.—The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation. In determining whether to make a recommendation concerning the type of prison facility appropriate for the defendant, the court shall consider any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2).

(b) Effect of Finality of Judgment.—Notwithstanding the fact that a sentence to imprisonment can subsequently be—

> (1) modified pursuant to the provisions of subsection (c);
>
> (2) corrected pursuant to the provisions of rule 35 of the Federal Rules of Criminal Procedure and section 3742; or
>
> (3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742;

a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

(c) Modification of an Imposed Term of Imprisonment.—The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction; or

(ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission; and

(B) the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure; and

(2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

* * * *

28 U.S.C. § 991 - United States Sentencing Commission; establishment and purposes

* * * *

(b) The purposes of the United States Sentencing Commission are to—

(1) establish sentencing policies and practices for the Federal criminal justice system that—

(A) assure the meeting of the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code;

(B) provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal con-

duct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices; and

(C) reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process; and

(2) develop means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

28 U.S.C. § 994 – Duties of the Commission

(a) The Commission, by affirmative vote of at least four members of the Commission, and pursuant to its rules and regulations and consistent with all pertinent provisions of any Federal statute shall promulgate and distribute to all courts of the United States and to the United States Probation System—

(1) guidelines, as described in this section, for use of a sentencing court in determining the sentence to be imposed in a criminal case, including—

(A) a determination whether to impose a sentence to probation, a fine, or a term of imprisonment;

(B) a determination as to the appropriate amount of a fine or the appropriate length of a term of probation or a term of imprisonment;

(C) a determination whether a sentence to a term of imprisonment should include a requirement that the defendant be placed on a term of supervised release after imprisonment, and, if so, the appropriate length of such a term;

(D) a determination whether multiple sentences to terms of imprisonment should be ordered to run concurrently or consecutively; and

(E) a determination under paragraphs (6) and (11) [1] of section 3563(b) of title 18;

(2) general policy statements regarding application of the guidelines or any other aspect of sentencing or sentence implementation that in the view of the Commission would further the purposes set forth in section 3553(a)(2) of title 18, United States Code, including the appropriate use of—

(A) the sanctions set forth in sections 3554, 3555, and 3556 of title 18;

(B) the conditions of probation and supervised release set forth in sections 3563(b) and 3583(d) of title 18;

(C) the sentence modification provisions set forth in sections 3563(c), 3564, 3573, and 3582(c) of title 18;

(D) the fine imposition provisions set forth in section 3572 of title 18;

(E) the authority granted under rule 11(e)(2) of the Federal Rules of Criminal Procedure to accept or reject a plea agree-

ment entered into pursuant to rule 11(e)(1); and

(F) the temporary release provisions set forth in section 3622 of title 18, and the prerelease custody provisions set forth in section 3624(c) of title 18; and

* * * *

(p) The Commission, at or after the beginning of a regular session of Congress, but not later than the first day of May, may promulgate under subsection (a) of this section and submit to Congress amendments to the guidelines and modifications to previously submitted amendments that have not taken effect, including modifications to the effective dates of such amendments. Such an amendment or modification shall be accompanied by a statement of the reasons therefor and shall take effect on a date specified by the Commission, which shall be no earlier than 180 days after being so submitted and no later than the first day of November of the calendar year in which the amendment or modification is submitted, except to the extent that the effective date is revised or the amendment is otherwise modified or disapproved by Act of Congress.

* * * *

U.S.S.G. § 1B1.10. Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)

(a) Authority.—

(1) In General.—In a case in which a defendant is serving a term of imprisonment, and the guideline range applicable to that defendant has subsequently been lowered as a result of an amendment to the Guidelines Manual listed

in subsection (d) below, the court may reduce the defendant's term of imprisonment as provided by 18 U.S.C. § 3582(c)(2). As required by 18 U.S.C. § 3582(c)(2), any such reduction in the defendant's term of imprisonment shall be consistent with this policy statement.

(2) Exclusions.—A reduction in the defendant's term of imprisonment is not consistent with this policy statement and therefore is not authorized under 18 U.S.C. § 3582(c)(2) if—

(A) none of the amendments listed in subsection (d) is applicable to the defendant; or

(B) an amendment listed in subsection (d) does not have the effect of lowering the defendant's applicable guideline range.

(3) Limitation.—Consistent with subsection (b), proceedings under 18 U.S.C. § 3582(c)(2) and this policy statement do not constitute a full resentencing of the defendant.

(b) Determination of Reduction in Term of Imprisonment –

(1) In General.—In determining whether, and to what extent, a reduction in the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement is warranted, the court shall determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (d) had been in effect at the time the defendant was sentenced. In making such determination, the court shall substitute only the amendments listed in subsection (d) for the corresponding guideline provisions that were applied when the defendant

was sentenced and shall leave all other guideline application decisions unaffected.

(2) Limitation and Prohibition on Extent of Reduction.—

(A) Limitation.—Except as provided in subdivision (B), the court shall not reduce the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement to a term that is less than the minimum of the amended guideline range determined under subdivision (1) of this subsection.

(B) Exception for Substantial Assistance.—If the term of imprisonment imposed was less than the term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing pursuant to a government motion to reflect the defendant's substantial assistance to authorities, a reduction comparably less than the amended guideline range determined under subdivision (1) of this subsection may be appropriate.

(C) Prohibition.—In no event may the reduced term of imprisonment be less than the term of imprisonment the defendant has already served.

(c) Cases Involving Mandatory Minimum Sentences and Substantial Assistance.—If the case involves a statutorily required minimum sentence and the court had the authority to impose a sentence below the statutorily required minimum sentence pursuant to a government motion to reflect the defendant's substantial assistance to authorities, then for purposes of this policy statement the amended guideline range shall be determined without regard to the operation

of §5G1.1 (Sentencing on a Single Count of Conviction) and §5G1.2 (Sentencing on Multiple Counts of Conviction).

(d) Covered Amendments.—Amendments covered by this policy statement are listed in Appendix C as follows: 126, 130, 156, 176, 269, 329, 341, 371, 379, 380, 433, 454, 461, 484, 488, 490, 499, 505, 506, 516, 591, 599, 606, 657, 702, 706 as amended by 711, 715, 750 (parts A and C only), and 782 (subject to subsection (e)(1)).

(e) Special Instruction.—

(1) The court shall not order a reduced term of imprisonment based on Amendment 782 unless the effective date of the court's order is November 1, 2015, or later.

Commentary

Application Notes:

1. Application of Subsection (a).—

(A) Eligibility.—Eligibility for consideration under 18 U.S.C. § 3582(c)(2) is triggered only by an amendment listed in subsection (d) that lowers the applicable guideline range (i.e., the guideline range that corresponds to the offense level and criminal history category determined pursuant to §1B1.1(a), which is determined before consideration of any departure provision in the Guidelines Manual or any variance). Accordingly, a reduction in the defendant's term of imprisonment is not authorized under 18 U.S.C. § 3582(c)(2) and is not consistent with this policy statement if: (i) none of the amendments listed in subsection (d) is applicable to the defendant; or (ii) an amendment listed in subsection (d) is applicable to the defendant

but the amendment does not have the effect of lowering the defendant's applicable guideline range because of the operation of another guideline or statutory provision (e.g., a statutory mandatory minimum term of imprisonment).

(B) Factors for Consideration.—

(i) In General.—Consistent with 18 U.S.C. § 3582(c)(2), the court shall consider the factors set forth in 18 U.S.C. § 3553(a) in determining: (I) whether a reduction in the defendant's term of imprisonment is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

(ii) Public Safety Consideration.—The court shall consider the nature and seriousness of the danger to any person or the community that may be posed by a reduction in the defendant's term of imprisonment in determining: (I) whether such a reduction is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

(iii) Post-Sentencing Conduct.—The court may consider post-sentencing conduct of the defendant that occurred after imposition of the term of imprisonment in determining: (I) whether a reduction in the defendant's term of imprisonment is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

* * * *

No. 17-5639

IN THE

Supreme Court of the United States

ADAUCTO CHAVEZ-MEZA,

Petitioner,

v.

UNITED STATES,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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QUESTION PRESENTED

Whether, when a district court decides not to grant a proportional sentence reduction under 18 U.S.C. § 3582(c)(2), it must provide some explanation for its decision when the reasons are not otherwise apparent from the record, as the U.S. Courts of Appeals for the 6th, 8th, 9th and 11th Circuits have held, or whether it can issue its decision without any explanation so long as it is issued on a preprinted form order containing boilerplate language providing that the court has "tak[en] into account the policy statement set forth in U.S.S.G. § 1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable," as the U.S. Courts of Appeals for the 4th, 5th and 10th Circuits have held.

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The opinion of the United States Court of Appeals for the Tenth Circuit is reprinted in the Joint Appendix (J.A.) at J.A. 49-60. It also is available at 854 F.3d 655 (10th Cir. 2017). The AO 247 Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2) of the United States District Court for the District of New Mexico is reproduced at Sealed J.A. 106-108.

JURISDICTION

The United States Court of Appeals for the Tenth Circuit entered its judgment on April 14, 2017, see J.A. 49. The petition for a writ of certiorari was filed on August 14, 2017, and granted on January 12, 2018.

STATUTORY PROVISIONS INVOLVED

The relevant statutes and provisions of the United States Sentencing Guidelines are reprinted in an appendix to this brief. App., *infra*, 1a-13a.

STATEMENT OF THE CASE

This case concerns the level of explanation a district court must include in an order reducing a criminal defendant's sentence pursuant to a retroactive amendment to the Sentencing Guidelines, when the reduced sentence is disproportionate to where the original sentence fell within the applicable guideline range. This Court should hold, consistent with the majority of the circuits that have passed on the question, that the district court must offer sufficient explanation to enable meaningful appellate review. Here, the district court provided no explanation when it refused to grant Petitioner Adaucto Chavez-Meza a

full reduction. The court's failure to state which relevant factors it considered and how it weighed them rendered the appellate tribunal's review an empty formality.

Statutory background

A criminal sentence generally is presumed final after the opportunity for direct review comes to an end. See *Brecht* v. *Abrahamson*, 507 U.S. 619, 633 (1993); 18 U.S.C. § 3582(c) ("The court may not modify a term of imprisonment once it has been imposed . . . ."). Congress, however, "has the power to fix the sentence for a federal crime, and the scope of judicial discretion with respect to a sentence is subject to congressional control." *Mistretta* v. *United States*, 488 U.S. 361, 364 (1989) (citation omitted). Through the Sentencing Reform Act of 1984, (the "SRA"), Pub. L. No. 98-473, 98 Stat. 1987, Congress enacted a limited exception to the general rule of finality, allowing a district court to modify an otherwise final sentence but setting parameters on how the district court is to exercise that discretion.

Section 3582(c) provides that,

> in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(*o*), upon motion of the defendant . . ., the court may reduce the term of imprisonment after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

§ 3582(c)(2). The applicable policy statement is found at U.S. Sentencing Guidelines Manual § 1B1.10 (U.S.

Sentencing Comm'n 2016) ("U.S.S.G"), which effectuates Congress's intent by allowing district courts to reduce the sentence of a defendant whose sentence was based on a guideline range subsequently amended by the Sentencing Commission. See *Dillon* v. *United States*, 560 U.S. 817, 831 (2010) (discussing how § 3582(c)(2) "permits a sentence reduction within the narrow bounds established by the Commission"); 28 U.S.C. § 994(u) ("If the Commission reduces the term of imprisonment recommended in the guidelines . . . , it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment . . . may be reduced.").

In sum, Congress has authorized a district court in limited situations to reduce a defendant's term of imprisonment after the sentence is otherwise final. This "congressional act of lenity [is] intended to give prisoners the benefit of later enacted adjustments to the judgments reflected in the Guidelines." *Dillon*, 560 U.S. at 828.

Factual background

Without entering a plea agreement, Mr. Chavez-Meza pled guilty to a two-count indictment charging him with conspiracy and possession with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846. J.A. 29. Using the 2012 version of the Guidelines Manual in effect at the time of sentencing, the United States Probation Office ("Probation") calculated Mr. Chavez-Meza's total offense level to be 33. Sealed J.A. 80. Because Mr. Chavez-Meza had no prior convictions, he had no criminal history points, placing him in criminal history category I. *Id.* at 80-81. Probation accordingly determined Mr. Chavez-Meza's guideline sentencing range to be a term of imprisonment between

135 and 168 months. *Id.* at 87. Neither party objected to the guideline range calculations.

Mr. Chavez-Meza, without requesting any specific sentence, asked the district court to vary below the advisory guideline range. J.A. 20-22. The government requested a sentence at the low end of the range, i.e., to a term of 135 months. *Id.* at 20-21. The court accepted the government's position and sentenced Mr. Chavez-Meza to an aggregate 135-month term of imprisonment. *Id.* at 26. The court made clear that the chosen sentence was driven by the Guidelines when it stated that "the reason the guideline sentence is high in this case, even the low end of 135 months, is because of the quantity, 1.75 kilograms of actual methamphetamine," and because methamphetamine destroys lives, families, and communities. *Id.* at 25.

The Commission subsequently issued Amendment 782 to the Guidelines, which became effective on November 1, 2014. U.S.S.G. app. C, amend. 782. Amendment 782, commonly referred to as the "drugs minus two" amendment, generally lowered by two points the base offense levels found in the drug quantity table at U.S.S.G. § 2D1.1(c). The Commission made this amendment retroactive. U.S.S.G. app. C, amend. 788, supp. at 86.

After the issuance of Amendment 782, Mr. Chavez-Meza filed a pro se motion to reduce his sentence under § 3582(c)(2). J.A. 38-41. Probation prepared a memorandum in which it determined that Amendment 782 reduced Mr. Chavez-Meza's guideline range from 135 to 168 months to 108 to 135 months. Sealed J.A. 63-64. In the memorandum, Probation noted that, since being imprisoned, Mr. Chavez-Meza had completed educational courses in masonry, construction, and healthy living; he was enrolled in GED classes; and had been assigned work duties. The memo-

randum also noted that Mr. Chavez-Meza was trying to enroll in a non-residential drug treatment program and had received one minor disciplinary sanction for using another inmate's phone number. *Id.* at 64-65.

Through appointed counsel, Mr. Chavez-Meza and the government stipulated that Mr. Chavez-Meza was eligible for a reduction. J.A. 42-44. Pointing out that the district court at sentencing had stated that his sentence was driven by the type and quantity of drugs at issue in his case, Mr. Chavez-Meza asked the district court to reduce his sentence to the low end of the amended guideline range, i.e., to 108 months. *Id.* at 43. Such a reduced sentence would have been proportional to where his original sentence fell within the non-amended guideline range. The government did not take a position as to what the reduced sentence should be.

The district court, without holding a hearing, granted Mr. Chavez-Meza's motion, but only in part. Rather than proportionally reducing Mr. Chavez-Meza's sentence to 108 months, the district court reduced his sentence to 114 months. *Id.* at 46. The court provided no explanation for the sentence it chose. Instead, it simply typed in the new sentence after checking the "GRANTED" box on an AO-247 Form, a form order issued by the Administrative Office of the United States Courts. *Id.* Although the form contained preprinted boilerplate language providing that the court had considered the motion and "tak[en] into account the policy statement set forth at U.S.S.G. § 1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable," the district court did not provide any explanation on the form order – including in the space for "additional comments" on the second page (filed under seal) – as to why it only was reducing Mr.

Chavez-Meza's sentence to 114 months, and not to 108 months. Sealed J.A. 106-108.

Appellate Review

On appeal to the Tenth Circuit, Mr. Chavez-Meza asserted that the district court had abused its discretion when it failed to provide any reason for declining to reduce his sentence proportionally to 108 months. Relying on that court's unpublished decision of *United States* v. *Nelson*, 303 F. App'x 641 (10th Cir. 2008), and Judge Ebel's concurring opinion in *United States* v. *Dorrough*, 84 F.3d 1309 (10th Cir. 1996), as well as several cases in other circuits, Mr. Chavez-Meza maintained that it was impossible to determine which factors the district court had considered and whether it relied on impermissible factors. J.A. 58. While recognizing that some courts have held it unnecessary for a district court to state its reasons when they are readily apparent from the record, Mr. Chavez-Meza distinguished those cases. Defendant-Appellant's Opening Brief at 9-11, *Chavez-Meza* v. *United States* (No. 16-2062) (10th Cir. June 16, 2016).

The Tenth Circuit affirmed. J.A. 49-62. The court first looked to 18 U.S.C. § 3553(c), which, *inter alia*, requires district courts to state their reasons for imposing a particular sentence at an original sentencing. Given that § 3582(c)(2) only requires district courts to "consider" the § 3553(a) factors and § 3553(a), unlike § 3553(c), does not impose a "duty of explanation" on district courts, the Tenth Circuit reasoned that § 3553(c) provides the "ceiling" for the level of explanation necessary in sentence-reduction proceedings. *Id.* at 53-54. Reading its earlier precedent as holding that "a sentencing court does not need to explain the reasons behind a within-guidelines sentence" at an original sentencing, the Tenth Circuit thus held "that, absent any indication the court failed

to consider the § 3553(a) factors, a district court completing form AO-247 need not explain choosing a particular guidelines-range sentence." *Id.* at 56. The Tenth Circuit acknowledged that its approach conflicted with that taken by multiple other circuits. *Id.* at 58.

Looking to the boilerplate form order, the court of appeals saw nothing on its face to indicate that the district court failed to consider the § 3553(a) factors, or otherwise abused its discretion. *Id.* at 57. Since the district court did not adopt Mr. Chavez-Meza's request for a proportional reduction, the court thought it "safe to infer" that the district court had carefully considered the record. *Id.* At bottom, while the Tenth Circuit thought it "might be good practice for the district courts" to explain their reasoning in sentence-reduction proceedings, the court found no abuse of discretion because Congress did not include an "explanatory requirement" for such cases. *Id.* at 60.

SUMMARY OF THE ARGUMENT

The Tenth Circuit ignored the bedrock principle, as set forth in *United States* v. *Taylor*, 487 U.S. 326 (1988), that where a statute requires district courts to consider certain factors, the court must clearly articulate how those factors affected its decision. This principle, which is predicated upon the need for meaningful appellate review, governs here because the sentence-reduction statute at issue, § 3582(c)(2), expressly requires the consideration of both the factors set forth in § 3553(a) (identifying numerous "[f]actors to be considered in imposing a sentence") as well as the applicable policy statements issued by the Sentencing Commission. The district court's lack of articulation here makes such review impossible.

This Court, in *Taylor* and elsewhere, repeatedly has emphasized that meaningful appellate review is necessary to ensure that a district court's exercise of discretion is faithful to Congress's statutory scheme and not the product of fiat, clear error, or the consideration of impermissible factors. For appellate review to be meaningful, then, a district court must provide some reasoned basis for its decision. A court merely stating that it considered the necessary factors, without any corresponding explanation as to how those factors impacted its decision, renders the idea of appellate review an empty formality.

The district court's failure to provide an explanation for denying a full reduction was particularly problematic in the context of Amendment 782. In promulgating Amendment 782, the Commission attempted to substantially reduce prison overcrowding caused by unnecessarily long sentences for drug crimes like Mr. Chavez-Meza's. The Commission predicted that sentences for approximately 46,000 prisoners would be reduced by an average of 18%, reflecting a strong expectation that district courts would grant the full reduction. All things equal, unless considerations of the § 3553(a) factors or public safety concerns required otherwise, courts were expected to take the sentence that they had originally imposed and drop it two full levels. Against this settled policy expectation, *Taylor*'s requirement that district courts articulate reasons for not providing the full reduction is all the more imperative.

The Tenth Circuit's rationale turned on the lack of an express "duty of explanation" in either § 3582(c) or § 3553(a) in comparison to § 3553(c). But Congress's express inclusion of a robust duty of explanation at original sentencings in § 3553(c) serves unique purposes and does nothing to foreclose the need for

meaningful appellate review in other contexts. Nor is the argument sound in any event because Congress's express inclusion of a duty in a different statute does not mean that Congress meant to remove entirely any requirement that a district court articulate a discernable reason for its exercise of sentencing discretion in § 3582(c)(2) proceedings.

The Court's statement in *Dillon* – that § 3582(c)(2) proceedings are of a "limited nature" – does not abrogate the need for articulation in order to effectuate meaningful appellate review. The actual holding in *Dillon* serves only to demonstrate that a district court's exercise of discretion is limited to imposing a reduced sentencing within the amended guideline range where the original sentence fell within the non-amended guideline range. Nothing in *Dillon* abrogates *Taylor* or otherwise suggests that a district court is relieved of its obligation to articulate how it exercised its discretion. While lengthy explanations, like lengthy proceedings, are unnecessary, some articulation is necessary so that appellate courts can ensure that Congress's scheme is given proper effect.

The court of appeals' decision in Mr. Chavez-Meza's case demonstrates that appellate review without the benefit of any articulation of reasons requires speculation by the appellate court and does not facilitate functional or fair review.

First, the Tenth Circuit's decision to "infer" that the district court relied upon Mr. Chavez-Meza's minor disciplinary sanction (for using another inmate's phone number) only raises more questions than it answers. The Bureau of Prisons' precise scale of infractions and appropriate punishments (which Mr. Chavez-Meza duly received) belies the speculation that the district court chose, in effect, to punish Mr. Chavez-Meza with six months of additional impris-

onment. The Tenth Circuit's speculation also fails to account for how the district court weighed the disciplinary sanction against Mr. Chavez-Meza's demonstrated efforts – through certifications and courses – at rehabilitation, and creates exactly the type of potentially unwarranted disparity that courts and the Commission are charged by Congress to avoid

Second, the Tenth Circuit wrongly grounded its decision in its apparent belief that a court, at original sentencing, never needs to explain its reasons for a within-guideline sentence. Such a position disregards this Court's admonition that all sentences are reviewed for abuse of discretion and that a district court must always provide sufficient explanation to satisfy the appellate court that it has a reasoned basis for its decision.

ARGUMENT

I. A DISTRICT COURT MUST BOTH CONSIDER AND EXPLAIN APPLICABLE SENTENCING FACTORS AND POLICY STATEMENTS IN ORDER TO MAKE MEANINGFUL APPELLATE REVIEW POSSIBLE.

A. Congress's Incorporation Of Sentencing Factors In § 3582 Requires District Courts to Articulate Reasons For Their Discretionary Choices.

In deciding this case, the Tenth Circuit ignored this Court's precedents providing that district courts are required to articulate reasons behind their exercise of discretionary authority, especially where, as here, a statute sets forth factors relevant to the exercise of that discretion. In *Taylor* for example, the Court held that, "[w]here . . . Congress has declared that a deci-

sion will be governed by consideration of particular factors, a district court must carefully consider those factors as applied to the particular case, and, whatever its decision, *clearly articulate* their effect in order to permit meaningful appellate review." 487 U.S. at 336 (emphasis added).

Taylor governs this case because § 3582(c)(2) provides that a district court may modify an otherwise-final sentence only "after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission."

As this Court explained in *Dillon*, a district court considering a sentence-reduction motion pursuant to § 3582(c)(2) must undertake a two-step analysis. A court must first determine under U.S.S.G. § 1B1.10 whether the defendant is eligible for a reduction and, if so, the extent of the reduction allowed. *Dillon*, 560 U.S. at 827. At the second step, the district court determines whether a sentence reduction is warranted in whole or in part under the particular circumstances of the case. In making this determination, the court must consider two sets of factors and may consider a third. It "shall consider" the applicable § 3553(a) factors. U.S.S.G. § 1B1.10 cmt. 1(B)(i). It also "shall consider" the potential impact the reduction would have on public safety. U.S.S.G. § 1B1.10 cmt. 1(B)(ii). And it may, but is not required to, consider the defendant's post-sentencing conduct. U.S.S.G. § 1B1.10 cmt. 1(B)(iii).

Congress, through the Commission, therefore, carefully prescribed how a district court is to exercise its discretion in modifying an otherwise final sentence. At the first step of the inquiry, "[t]he binding policy statement governing § 3582(c)(2) motions plac-

es considerable limits on district court discretion." *Freeman* v. *United States*, 564 U.S. 522, 531 (2011) (plurality opinion). And at the second step, the court's duty to consider multiple factors in determining whether the reduction is warranted gives the court only "circumscribed discretion." *Dillon*, 560 U.S. at 829.

When Congress circumscribes the discretion of a district court by requiring it to consider several factors, it implicitly requires the court to explain which factors it considered and how it weighed those factors. Without some explanation as to how the court exercised its discretion in such circumstances, the appellate tribunal is unable to determine whether congressional intent is effectuated. *Taylor*, 487 U.S. at 336.

B. Articulating Reasons For Exercising Discretion Under § 3582(c) Is Necessary For Meaningful Appellate Review.

All courts of appeals review the second step of a district court's § 3582(c)(2) decision for abuse of discretion.[1] But this "hardly means that [such decisions

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[1] *United States* v. *LaBonte*, 70 F.3d 1396, 1411 (1st Cir. 1995), *rev'd on other grounds*, 520 U.S. 751 (1997); *United States* v. *Borden*, 564 F.3d 100, 104 (2d Cir. 2009); *United States* v. *Mateo*, 560 F.3d 152, 154 (3d Cir. 2009); *United States* v. *Smalls*, 720 F.3d 193, 195 (4th Cir. 2013); *United States* v. *Pardue*, 36 F.3d 429, 430 (5th Cir. 1994) (per curiam); *United States* v. *Webb*, 760 F.3d 513, 517 (6th Cir. 2014); *United States* v. *Hall*, 582 F.3d 816, 817 (7th Cir. 2009); *United States* v. *Hernandez-Marfil*, 825 F.3d 410, 412 (8th Cir. 2016) (per curiam); *United States* v. *Dunn*, 728 F.3d 1151, 1155 (9th Cir. 2013); *United States* v. *Piper*, 839 F.3d 1261, 1265 (10th Cir. 2016), *cert. denied*, 137 S. Ct. 2263 (2017); *United States* v. *Webb*, 565 F.3d 789, 792 (11th Cir. 2009) (per curiam); *United States* v. *Kennedy*, 722 F.3d 439, 442 (D.C. Cir. 2013).

are] unfettered by meaningful standards or shielded from thorough appellate review." *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 416 (1975); see *Gall* v. *United States*, 552 U.S. 38, 72 (2007) (Alito, J., dissenting) ("[A]buse-of-discretion review is not toothless; and it is entirely proper for a reviewing court to find an abuse of discretion when important factors . . . are 'slighted.'" (quoting *Taylor*, 487 U.S. at 337)).

"Discretion is not a whim, and limiting discretion according to legal standards helps promote the basic principle of justice that like cases should be decided alike." *Martin* v. *Franklin Capital Corp.*, 546 U.S. 132, 139 (2005); see also *United States* v. *Burr*, 25 F. Cas. 30, 35 (C.C. Va. 1807) (No. 14,692D) (Marshall, C.J.) ("[A] motion to [a court's] discretion is a motion, not to its inclination, but to its judgment; and its judgment is to be guided by sound legal principles."). Appellate review for abuse of discretion, then, exists to ensure that the district court's discretionary choice was not based "on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Cooter & Gell* v. *Hartmarx Corp.*, 496 U.S. 384, 405 (1990). Ultimately, "[w]hether discretion has been abused depends, of course, on the bounds of the discretion and the principles that guide its exercise." *Taylor*, 487 U.S. at 336.

To be sure, "the district court's judgment of how opposing considerations balance should not lightly be disturbed," *Id.* at 337, but an appellate court must still "ascertain whether a district court has ignored or slighted a factor that Congress has deemed pertinent [to the decision at hand], thereby failing to act within the limits prescribed by Congress." *Id.* In such a case, a court of appeals may conclude that the district court made a mistake in balancing opposing consid-

erations. See *id.* at 338-42 (holding that district court abused its discretion under the Speedy Trial Act where it failed to consider one relevant factor, gave too little weight to a second factor, and gave too much weight to third factor).

This Court before and after *Taylor* repeatedly has reversed cases for abuse of discretion where the district court failed to articulate sufficiently how it considered the relevant factors when exercising its discretion. For example, in *Northcross* v. *Board of Education*, 412 U.S. 427 (1973) (per curiam), the Court vacated and remanded where the district court did not explain how it exercised its discretion in denying a fee award under the Emergency School Aid Act of 1972. *Id.* at 428-29. And in *Perdue* v. *Kenny A. ex rel. Winn*, 559 U.S. 542 (2010), the Court determined that a district court had abused its discretion in enhancing a fee award made pursuant to 42 U.S.C. § 1988 where it did not provide sufficient justification for its "essentially arbitrary" decision. *Id.* at 557. Because "a reasonably specific explanation" was not provided, adequate appellate review was impossible. *Id.* at 558; see also *Hensley* v. *Eckerhart*, 461 U.S. 424, 438-40 (1983) (reversing fee award where district court failed to articulate one of twelve factors deemed relevant by Congress); cf. *Piper Aircraft Co.* v. *Reyno*, 454 U.S. 235, 257-61 (1981) (reviewing district court's reasoning in dismissing case on grounds of *forum non conveniens*); *Traxler* v. *Multnomah Cty.*, 596 F.3d 1007, 1016 (9th Cir. 2010) ("It is particularly important for the district court to provide a rationale for its decision when effectuating a congressional mandate that the decision reflect certain enumerated factors." (citing *Taylor*, 487 U.S. at 336-37)).

Thus, for appellate courts to ensure that a district court in the context of a § 3582(c)(2) proceeding con-

sidered the relevant factors, did not consider any impermissible factors, and did not clearly err in weighing the relevant factors, a district court must provide *some* reasoned basis on which appellate review can turn. Otherwise, it is impossible for a reviewing court to know how the district court made its decision. Cf. *United States* v. *Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 497 (2001) (holding that court exercising its equitable discretionary power "cannot ignore the judgment of Congress deliberately expressed in legislation" (internal quotation marks omitted)); *United States* v. *Chi., M., St. P. & P. R. Co.*, 294 U.S. 499, 511 (1935) ("We must know what a decision means before the duty becomes ours to say whether it is right or wrong.").

Several courts of appeals rightly have understood and applied this fundamental principle in the context of a § 3582(c)(2) proceeding. For example, in *United States* v. *Howard*, 644 F.3d 455 (6th Cir. 2011), a case directly on point, the Sixth Circuit remanded because the district court failed to provide any explanation when it reduced a defendant's sentence disproportionately to where it fell within the non-amended guideline range. *Id.* at 460-62; see also *United States* v. *Christie*, 736 F.3d 191, 198 (2d Cir. 2013) ("[W]e lack any understanding of the reasoning underlying the district court's [§ 3582(c)(2)] decision, and accordingly are unable to determine whether that decision was within the bounds of the district court's discretion."); *United States* v. *Marion*, 590 F.3d 475, 478 (7th Cir. 2009) (remanding denial of § 3582(c)(2) motion because it was "impossible . . . to ensure that the district court did not abuse its discretion if the order shows only that the district court exercised its discretion rather than showing *how* it exercised that discretion.").

Even the Tenth Circuit acknowledges that it cannot be enough for a district court to say, in effect: "Trust me, I considered the necessary factors and my decision reflects a reasoned judgment." See *United States* v. *Fisher*, 55 F.3d 481, 487 (10th Cir. 1995) ("Judicial action is not an exercise in *ipse dixit* – the bare assertion of an individual resting not on expressed reason, but merely on the authority vested in an office."). A court's mere statement that it "considered" the relevant factors, then, without any explanation as to *how* it considered those factors renders the entire concept of appellate review meaningless, i.e., "an empty formality." *Gall*, 552 U.S. at 68 (Alito, J., dissenting).

C. Requiring Articulation In The Context Of A § 3582(c)(2) Motion Is Particularly Important Given The Purposes Of Amendment 782.

On April 30, 2014, the Commission submitted Amendment 782 to Congress. The amendment reduced by two levels the offense levels assigned to drug quantities. Amendment 782 became effective on November 1, 2014. The Commission made amendment 782 retroactive, but delayed its effective date for one year in order to allow courts and agencies in the criminal justice system time to prepare. U.S.S.G. app. C, amend. 788, supp. at 86.

Amendment 782 reflected the Commission's determination "that setting the base offense levels slightly above the mandatory minimum penalties is no longer necessary to achieve its stated purpose."[2] U.S.S.G.

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[2] The Commission had originally set the base offense levels for drug offenses to reflect "guideline ranges slightly higher than the mandatory minimum levels to permit some downward adjustments for defendants who plead guilty or otherwise cooperate with authorities." Patti B. Saris, *A Generational Shift for*

app C, amend. 782, supp. at 71 (reason for amendment 782). "The amendment was also motivated by the significant overcapacity and costs of the Federal Bureau of Prisons." *Id.* at 72; see also 28 U.S.C. § 994(g) ("The sentencing guidelines . . . shall be formulated to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons, as determined by the Commission."). In promulgating Amendment 782, "[t]he Commission carefully weighed public safety concerns and, based on past experience, existing statutory and guideline enhancements, and expert testimony, concluded that the amendment should not jeopardize public safety." U.S.S.G. app. C, amend. 782, supp. at 73. The Commission estimated that 46,000 prisoners would be affected and, based upon its expectation that eligible prisoners ordinarily would receive the full reduction, that the average sentence would be reduced by 18%. U.S.S.G. app. C, amend. 788, supp. at 86 (reason for amendment 788); Office of Res. & Data, U.S. Sentencing Comm'n, Mem. 7, 16 (May 27, 2014), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20140527_Drug_Retro_Anaysis.pdf.

Accordingly, when a district court declines, without explanation, to grant a full reduction, there is no basis for an appellate court to infer from the silent record that such a decision is consistent with the applicable § 3553(a) factors and the Commission's policy statement.

Federal Drug Sentences, 52 Am. Crim. L. Rev. 1, 6 (2015); *see* 21 U.S.C. §§ 841(b)(1)(A) and (b)(1)(B).

II. A DISTRICT COURT'S DUTY TO ARTICULATE ITS REASONING IS NOT ABROGATED BY THE LACK OF A CROSS-REFERENCE TO § 3553(c) OR THE "LIMITED NATURE" OF § 3582(c)(2) PROCEEDINGS.

A. The Duty To Articulate Is Not Abrogated By The Absence Of A Cross-Reference To § 3553(c).

The opinion below is grounded in the following syllogism: (1) § 3582(c)(2) requires district courts to consider the § 3553(a) factors; (2) § 3553(a), in turn, requires district courts to consider certain factors, but, unlike § 3553(c) does not impose a "duty of explanation"; (3) district courts, therefore have no obligation to provide any explanation as to how they exercised their discretion in a ruling on a § 3582(c)(2) motion. J.A. 53-54. This syllogism is flawed because Congress's decision not to include a cross-reference to § 3553(c) was in no way an affirmative decision to relieve district courts of their fundamental obligation to explain their discretionary choices. Put differently, it does not follow that by not explicitly referencing in § 3582(c)(2) the "duty of explanation" found at § 3553(c) that Congress intended for district courts to have unbounded discretion requiring no articulation.

At bottom, the Tenth Circuit's syllogism fails to appreciate that whenever Congress constrains district courts' discretionary choices and allows for review, the fount of the "duty to explain" lies not in explicit congressional demand, but in the fundamental need for meaningful appellate review. While Congress may impose greater procedural protections when it chooses, this does not mean that it negates the need for meaningful appellate review in other contexts. See *Burns* v. *United States*, 501 U.S. 129, 136 (1991) ("In

some cases, Congress intends silence to rule out a particular statutory application, while in others Congress' silence signifies merely an expectation that nothing more need be said in order to effectuate the relevant legislative objective.").

Section 3582(c)(2) requires district courts to "consider" the § 3553(a) factors "to the extent that they are applicable" in deciding by how much to reduce a sentence pursuant to a retroactive Guideline amendment. Section 3553(a), in turn, directs courts to "consider" a variety of factors. While it is true that § 3553(a) "nowhere imposes on the court a duty to address those factors on the record," J.A. 53, this hardly means that it is "incongruous" to expect district courts to explain in some fashion their discretionary choices sufficient to effectuate meaningful appellate review.

Congress, of course, may impose greater duties on district courts than would otherwise normally be required. This is precisely what Congress did in enacting § 3553(c) as part of the SRA to further numerous, intertwined, goals in connection with its wholesale reform of federal sentencing.

Prior to enactment of the SRA, district courts generally had no obligation to state their reasons for imposing any particular sentence. See *Dorszynski* v. *United States*, 418 U.S. 424, 440-42 (1974). This rule was grounded in the idea that, so long as a judge had unbounded discretion to sentence a defendant within a statutory range, the sentence was unreviewable on appeal. Knowing the reasons for a judge's sentence, thus, would serve no purpose. See *id.* at 441-42. But cf. *Kent* v. *United States*, 383 U.S. 541, 554 (1966) ("[T]here is no place in our system of law for reaching a result of such tremendous consequences without ceremony – without hearing, without effective assis-

tance of counsel, without a statement of reasons."). This rule, however, was not without its detractors. In his concurrence in *Dorszynski*, Justice Marshall understood that providing a statement of reasons at sentencing advances numerous salutary policies besides that of simply effectuating appellate review. These policies include, among others, assisting "correctional authorities in their handling of the prisoner after sentence," and "enhanc[ing] the legitimacy of the sentencing process as perceived by the general public." 418 U.S. at 455, 456 (Marshall, J., concurring in the judgment).

Around the same time, the Court held in numerous cases that a statement of reasons is necessary, not to effectuate appellate review, but simply to comply with due process. See *Kerry* v. *Din*, 135 S. Ct. 2128, 2144 (2015) (Breyer, J., dissenting) ("We have often held that this kind of statement, permitting an individual to understand *why* the Government acted as it did, is a fundamental element of due process." (citing cases)). It is no wonder, then, that several courts and commentators in the era before the SRA voiced concern with the fact that district courts did not need to provide any reasons as to their sentencing decisions.[3]

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[3] Judge Marvin Frankel of the U.S. District Court for the Southern District of New York, a principal champion of the SRA, see S. Rep. No. 98-225, at 37 (1983), was one of the leading critics. Marvin E. Frankel, *Criminal Sentences: Law Without Order* 40-41 (Hill & Wang 1972) ("The duty to give an account of the decision is to promote thought by the decider, to compel him to cover the relevant points, to help him eschew irrelevancies—and, finally, to make him show that these necessities have been served."); Marvin E. Frankel, *Lawlessness in Sentencing*, 41 U. Cin. L. Rev. 1, 28 (1972) (explaining that having judges explain sentencing decisions was "important for its own sake" aside from aiding appellate review). Long before the SRA, Judge Frankel proposed a "Commission for Sentencing." *Id.* at 50-54.

See, *e.g.*, *United States* v. *Cruz*, 523 F.2d 473, 476 (9th Cir. 1975) (Kennedy, J.) ("The administration of justice and the purposes of sentencing are best served when the sentencing judge states openly the factors he considers in imposing judgment.") (citing Justice Marshall's concurrence in *Dorszynski*); *United States* v. *Velazquez*, 482 F.2d 139, 142 (2d Cir. 1973) ("The judge's evaluation of the defendant may also provide some guidance to the correctional authorities in their handling of the prisoner following sentencing. Finally, publicizing the reasoned basis of a sentence may enhance its legitimacy as perceived by the general public and, hopefully, by the defendant."); cf. J.A. 54 ("Original sentencing proceedings invoke important constitutional rights . . . ."); *United States* v. *Salerno*, 481 U.S. 739, 751-52 (1987) (holding Bail Reform Act survived facial procedural due process challenge because it included a provision for a written statement of reasons).

With enactment of the SRA, Congress effectuated a sea change in federal sentencing law. By incorporating in the SRA the requirement that a judge, at the time of sentencing and in open court, provide reasons for imposing such a sentence, Congress sought to address the concerns identified above. In short, § 3553(c), as part of a multi-faceted wholesale reform to federal sentencing, was intended to serve a multitude of salutary and functional purposes. See S. Rep. No. 98-225, at 60 ("The statement of reasons can be used by each participant in the Federal criminal justice system charged with reviewing or implementing a sentence.").

Thus simply because § 3582(c)(2) refers to § 3553(a), and not to § 3553(c) and its concomitant "duty of explanation," J.A. 53, does not mean, as the Tenth Circuit believes, that a district court is ab-

solved of all responsibility to provide "a reasonably specific explanation" for its actions. *Perdue*, 559 U.S. at 558. Indeed, "[c]ourts have a general duty to explain their reasoning. . . . [N]othing in *Dillon* suggests that [appellate courts] should abrogate district courts' general responsibility to provide some individualized legal reasoning." *United States* v. *Peters*, 843 F.3d 572, 582 (4th Cir. 2016) (Gregory, C.J., dissenting), *cert. denied*, 137 S. Ct. 2267 (2017).

A district court's so-called "duty of explanation" thus arises not from any statutory command, but from the longstanding principle that district courts must provide sufficient explanation for their discretionary decisions in order to allow for meaningful appellate review – particularly where Congress has specifically identified factors that district courts are to consider. Indeed, the Court in *Taylor* required a sufficient explanation for the district court's decision even though the Speedy Trial Act has no statutory provision akin to § 3553(c). See 487 U.S. at 336-37. Similarly, *Perdue* required district courts to sufficiently explain a fee award, even though no such provision is found in 42 U.S.C. § 1988. 559 U.S. at 558; see also *Northcross*, 412 U.S. at 428-29 (vacating and remanding where court did not explain how it exercised its discretion in denying fee award under Emergency School Aid Act of 1972). The simple reason these cases were remanded was because, like here, the lower courts insufficiently explained *how* they exercised their discretion. Absent such explanation, meaningful appellate review is impossible.[4]

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[4] A similar situation is found in the context of a district court denying a defendant's motion for early termination of supervised release pursuant to 18 U.S.C. § 3583(e). Like § 3582(c)(2), § 3583(e) does not refer to § 3553(c) or otherwise impose a "duty of explanation." Yet as the D.C. Circuit correctly understands,

B. The "Limited Nature" Of § 3582(c)(2) Proceedings Does Not Abrogate The Need For Meaningful Appellate Review.

In opposing certiorari, the Solicitor General relied upon language found in *Dillon* to support the position that district courts are relieved of their obligation to articulate the rationale underlying their discretionary choices in ruling on a § 3582(c)(2) motion. See Brief in Opposition at 14-15, *Chavez-Meza* v. *United States* (No. 17-5639) (U.S. Nov. 17, 2017); see also *United States* v. *Smalls*, 720 F.3d 193, 198 (4th Cir. 2013). But this misreads *Dillon*, as nothing in that case can be read for the proposition that district courts have unlimited and unreviewable discretion when exercising power Congress granted to them in § 3582(c)(2).

In *Dillon*, the issue was whether, after *United States* v. *Booker*, 543 U.S. 220 (2005), district courts had the discretion to reduce a term of imprisonment below the minimum of the amended guideline range when the original sentence, itself, did not fall below the guideline range. *Dillon*, 560 U.S. at 819. In holding that *Booker* did not apply to § 3582(c)(2), the Court described sentence-reduction proceedings as "limited" in nature and "not constitutionally compelled." *Id.* at 827, 828. Seizing on this language, some have held that district courts do not need, like they would at an original sentencing, to provide any

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absent explanation or where "clear and compelling reasons to deny relief leap out from the record," appellate courts "cannot just reflexively presume that the learned judge appropriately exercised his discretion and considered all of the relevant factors, because that would risk turning abuse of discretion review into merely a rubber stamp." *United States* v. *Mathis-Gardner*, 783 F.3d 1286, 1288-89 (D.C. Cir. 2015) (internal quotation marks omitted).

explanation for a ruling on a sentence-reduction motion. See *Smalls*, 720 F.3d at 198.

But *Dillon* did nothing more than affirm Congress's power to constrain judicial discretion. See 560 U.S. at 829 (explaining how § 3582(c)(2) proceedings "give judges . . . circumscribed discretion"). *Dillon* did not alter the fact that district courts must consider certain factors when deciding whether, and by how much, to reduce a sentence pursuant to a retroactive guideline amendment. See U.S.S.G. § 1B1.10 cmt. 1(B)(i)-(ii). Indeed, *Dillon* affirmed that Congress, through the Commission, has ultimate authority to "determin[e] in what circumstances and by what amount the sentences of prisoners affected by Guidelines amendments may be reduced." 560 U.S. at 830 (internal quotation marks omitted); see also *id.* at 825 (explaining that § 3582(c)(2) "give[s] courts the power to reduce an otherwise final sentence *in circumstances* specified by the Commission" (internal quotation marks omitted and emphasis added)). See also *Taylor*, 487 U.S. at 336.

In short, nothing in *Dillon* relieved district courts of their obligation to provide sufficient explanation of their discretionary choices so as to allow for meaningful appellate review. If anything, the case instead affirmed that when Congress imbues a district court with discretionary power, appellate review exists to ensure that the district court acted within bounds established by Congress. Requiring district courts to explain their decision in a § 3582(c)(2) proceeding is, in effect, no different than requiring them to explain their original sentencing decision. While § 3582(c)(2) may "not authorize a sentencing or resentencing proceeding," *Dillon*, 560 U.S. at 825, the end result of a § 3582(c)(2) proceeding is that a sentence is still imposed. See *id.* at 827 (explaining that "[o]nly if the

sentencing court originally imposed a term of imprisonment below the Guidelines range does § 1B1.10 authorize a court proceeding under § 3582(c)(2) to impose a term comparably below the amended range" (internal quotation marks omitted)).

As a plurality of this Court acknowledged in *Freeman*, all sentences – including sentences reduced pursuant to § 3582(c)(2) – are reviewed for abuse of discretion. 564 U.S. at 532 (citing *Gall*, 552 U.S. at 49); see also *United States* v. *Lafayette*, 585 F.3d 435, 439 (D.C. Cir. 2009) ("Because section 3582(c)(2) unambiguously grants discretionary authority to the district court . . . we follow the familiar standard for review of sentencing decisions . . . ."). A district court ruling on a § 3582(c)(2) motion, then, "should set forth enough to satisfy the appellate court that he has considered the parties' arguments *and* has a reasoned basis for exercising his own legal decisionmaking authority." *Rita* v. *United States*, 551 U.S. 338, 356 (2007) (emphasis added) (citing *Taylor*, 487 U.S. at 336-37); see also *Gall*, 552 U.S. at 50 ("After settling on the appropriate sentence, he must adequately explain the chosen sentence to allow for meaningful appellate review . . . ."). While lengthy explanation ordinarily will not be necessary, "[t]he touchstone of reasonableness is whether the record as a whole reflects rational and meaningful consideration of the factors . . . ." *United States* v. *Grier*, 475 F.3d 556, 571 (3d Cir. 2007) (en banc).

Finally it is precisely because of the "limitations" of these proceedings that some explanation for denying a full reduction is all the more necessary. Unlike original sentencing proceedings, defendants do not have the right to a hearing or counsel in § 3582(c)(2) proceedings. See *United States* v. *Webb*, 565 F.3d 789, 794 (11th Cir. 2009); Fed. R. Crim. P. 43(b)(4). And,

unlike at original sentencing proceedings, the Commission's policy statements are binding on district courts in the § 3582(c)(2) context, reflecting the "substantial role Congress gave the Commission with respect to sentence-modification proceedings." *Dillon*, 560 U.S. at 826. Given the fewer procedural checks available in § 3582(c)(2) proceedings, combined with the circumscribed nature of judicial discretion in such proceedings, an explanation for denying a full reduction is the only means to ensure that the district court did not render an arbitrary decision.

III. THE COURT OF APPEALS ERRED BY SUBSTITUTING ITS OWN SPECULATION FOR A MEANINGFUL REVIEW OF THE DISTRICT COURT'S ORDER.

A. The Tenth Circuit Had To Speculate About Which Factors Were Dispositive In Mr. Chavez-Meza's Sentence Modification.

Meaningful appellate review under an abuse-of-discretion standard requires that the court of appeals not have to speculate about which factors a sentencing judge considered and how it weighed those factors in arriving at its modification decision. *Taylor*, 487 U.S. at 336-37.

In this case, it is not at all evident how the district court exercised its discretion in reducing Mr. Chavez-Meza's sentence. The reduced sentence of 114 months is not proportional to where Mr. Chavez-Meza's original sentence fell within the guideline range. The district court, consistent with the government's request, originally sentenced Mr. Chavez-Meza to 135 months, which represented the low-end of the guideline range. A proportional sentence would have resulted in a reduced sentence of 108 months, not 114 months.

Apparently relying, in part, on *United States* v. *Zayas-Ortiz*, 808 F.3d 520 (1st Cir. 2015), the Tenth Circuit below perfunctorily stated that it thought it "safe to infer" that the district court relied on the "materials" submitted by the parties (which included information about one minor incident of misconduct while in prison) to decide that it would not proportionally reduce Mr. Chavez-Meza's sentence. J.A. 57. Yet, unlike the Tenth Circuit, the court in *Zayas-Ortiz* relied not on its own review of the record to "infer" what it thought might be pertinent, but on a party's specific position supported by specific facts in the record.[5] 808 F.3d at 524.

Rather than conducting any meaningful review of the district court's decision in this case, the Tenth Circuit instead simply rationalized *post hoc* the dis-

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[5] The Tenth Circuit also cited to *Smalls*, 720 F.3d 193, and *United States* v. *Brown*, 497 F. App'x 196 (3d Cir. 2012), as cases holding "that no elaborate explanation is necessary in § 3582 sentence-reduction proceedings." J.A. 57. Similar to *Zayas-Ortiz*, however, *Brown* is inapposite and does not support the Tenth Circuit's holding that *no* explanation is necessary so long as the district court signed a form order including the provision that it had considered the relevant factors. In *Brown*, "[b]oth the original and the reduced sentences were in the middle of the applicable Guidelines ranges." 497 F. App'x at 197. Thus, because the reduced sentence "was otherwise consistent with the original sentence, which it had explained in the original sentencing hearing," it was "evident in the record" how the district court analyzed the relevant factors. *Id.* at 198. While *Smalls* did hold "that, in the absence of evidence a court neglected to consider relevant factors, the court does not err in failing to provide a full explanation for its § 3582(c)(2) decision," 720 F.3d at 196, it, too, is inapposite because it also involved a proportional sentence reduction. *Id.* at 195. That said, the Fourth Circuit has summarily extended *Smalls* to situations, like here, that involve a disproportionate reduction. *See United States* v. *Locklair*, 668 F. App'x 477, 477-78 (4th Cir. 2016) (per curiam).

trict court's decision. As the Court in *Taylor* understood, however, there are several problems with the Tenth Circuit's approach, "not the least of which is that the district court did not articulate" the reason that the appellate court "inferred." 487 U.S. at 337.

Ultimately, the court of appeals' decision to look to the record and "infer" why the district court did what it did erroneously substitutes an appellate court's speculation for a *meaningful* review of the district court's decision. See *id.* ("Because the District Court did not fully explicate its reasons . . ., we are left to speculate in response to some of the parties' arguments pro and con."); *United States* v. *Zanghi*, 209 F.3d 1201, 1204 (10th Cir. 2000) ("[W]here there is no record of the judge's decisionmaking process, our review loses its appellate character and becomes instead a post hoc assumption of the district court's responsibilities."); cf. *Liti* v. *C.I.R.*, 289 F.3d 1103, 1105 (9th Cir. 2002) ("Although we could review the record and speculate on which reasons the court below found persuasive, doing so would merely substitute our reasons for those of the Tax Court.").

While, theoretically, it is *possible* the district court thought the one disciplinary sanction significant enough to warrant, in effect, an extra six months in prison, it equally is possible that the district court relied on an entirely different factor, or set of factors, and did not even consider the disciplinary sanction. See U.S.S.G. § 1B1.10 cmt. 1(B)(iii) (providing that a district court "may" take into account the defendant's post-sentencing conduct when determining the extent of a reduction).

The Tenth Circuit's speculation raises more questions than it answers. For example, if the district court's decision not to reduce Mr. Chavez-Meza's sentence proportionally was predicated on the one inci-

dent of misconduct, then the Court somehow dismissed the weight of Mr. Chavez-Meza's documented good conduct – which included the completion of several hours of educational courses, enrollment in a GED program, being assigned work duties, and his attempts to enroll in a drug treatment program. Further, did the district court consider the fact that the Bureau of Prisons considers the misconduct in which Mr. Chavez-Meza engaged, i.e., "phone abuse" with a severity code of 397, to be a relatively minor transgression akin to being unsanitary or untidy (severity code 330), failing to stand during count (severity code 320), or smoking in an unauthorized area (severity code 332)? See Fed. Bureau of Prisons, U.S. Dep't of Justice, Inmate Discipline Program tbl. 1 at 51-52 (July 8, 2011), https://www.bop.gov/policy/progstat/5270_009.pdf.

Perhaps the district court had a blanket policy of denying full reductions to any defendant who had any type of reported discipline while in prison, no matter the severity. Yet application of such a policy to Mr. Chavez-Meza, which effectively imprisons him for an additional six months after the Bureau of Prisons already sanctioned him with the loss of phone privileges for 30 days and the loss of work privileges for 180 days (but did not see fit to forfeit any of his good time), would surely constitute an abuse of discretion. See *id.* tbl. 1 at 52-53; see also 18 U.S.C. § 4042(a)(3) (providing Bureau of Prisons with authority to discipline inmates).

Moreover, the district court's original sentence of Mr. Chavez-Meza was grounded solely in the Guidelines, i.e., by the weight and type of drug underlying Mr. Chavez-Meza's convictions, and the Government specifically requested a sentence at the bottom of the guidelines ranges. Since the Commission saw fit to

retroactively reduce the punishment for the crimes for which Mr. Chavez-Meza was convicted, wouldn't an effective six-month term of imprisonment for one relatively minor transgression while incarcerated undermine the SRA's goals of uniformity in sentencing? See *Freeman*, 564 U.S. at 533 ("Section 3582(c)(2) contributes to that goal by ensuring that district courts may adjust sentences imposed pursuant to a range that the Commission concludes are too severe, out of step with the seriousness of the crime and the sentencing ranges of analogous offenses, and inconsistent with the Act's purposes."); *Dillon*, 560 U.S. at 828 (discussing how § 3582(c)(2) is "intended to give prisoners the benefit of later enacted adjustments to the judgments reflected in the Guidelines."); 28 U.S.C. § 991(b)(1)(B) (providing that purpose of the Commission is to, *inter alia*, "avoid[] unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct"); cf. *Kimbrough* v. *United States*, 552 U.S. 85, 109-110 (2007) (discussing disparity between within-guideline range sentences for crack and powder cocaine offenses); *United States* v. *Reyes-Hernandez*, 624 F.3d 405, 421-22 (7th Cir. 2010) (applying *Kimbrough* and holding that district courts may consider whether the absence of fast-track programs in immigration cases create unwarranted sentencing disparities).

The issues above go to the heart of whether the district court abused its discretion – questions that Mr. Chavez-Meza could have asserted on appeal had the district court actually reasoned as the court below speculated that it did. The fact is, neither Mr. Chavez-Meza, nor the Tenth Circuit, nor this Court knows why the district court reduced Mr. Chavez-Meza's sentence disproportionately to where his orig-

inal sentence fell within the guideline range. It thus is impossible on review to determine whether it "ignored or slighted a factor that Congress . . . deemed pertinent." *Taylor*, 487 U.S. at 337.

B. The Duty To Provide Enough Explanation To Enable Meaningful Appellate Review Under An Abuse Of Discretion Standard Is Not Abrogated When Defendants Receive A Within-Guidelines Sentence Modification.

Finally, the opinion below grounded its decision in the unsupported statement that "a sentencing court does not need to explain the reasons behind a within-guidelines sentence." J.A. 59. But this cannot be so. As the Court made clear in *Gall*, "[r]egardless of whether the sentence imposed is inside or outside the Guidelines range, the appellate court must review the sentence under an abuse-of-discretion standard." 552 U.S. at 51. At bottom, this "standard directs appellate courts to evaluate what motivated the district judge's individualized sentencing decision." *Rita*, 551 U.S. at 364 (Stevens, J., concurring). Although a within-guidelines sentence "will not necessarily require lengthy explanation," "[t]he sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decisionmaking authority." *Id.* at 356 (majority opinion) (citing *Taylor*, 487 U.S. at 336-37); see also, *e.g.*, *United States* v. *Washington*, 739 F.3d 1080, 1082 (7th Cir. 2014) (remanding for explanation of sentence at low end of guideline range because sentencing courts are "required to provide *some* explanation for the sentence imposed beyond a rote and summary invocation of the § 3553(a) factors"); *United States* v. *Carey*, 589 F.3d 187, 195 (5th Cir. 2009) ("Within-guidelines sen-

tences require an explanation that allows for meaningful appellate review and the perception of fair sentencing.").

The court of appeals' overly-broad claim that a district court does not need to explain why it chose a particular sentence within a guideline range appears to have been derived from its reading of the earlier case of *United States* v. *Ruiz-Terrazas*, 477 F.3d 1196 (10th Cir. 2007), which relied heavily on § 3553(c) for its analysis. See J.A. 53, 55 ("'When imposing a sentence within the properly calculated Guidelines range, a district court must provide as Section 3553(c) indicates by its plain language, only a general statement noting the appropriate guideline range and how it was calculated'" (quoting *Ruiz-Terrazas*, 477 F.3d at 1202)). Contra *United States* v. *Sanchez-Juarez*, 446 F.3d 1109, 1117 (10th Cir. 2006) ("We are . . . persuaded that our pre-*Booker* requirement that district courts provide sufficient reasons to allow meaningful appellate review of their discretionary sentencing decisions continues to apply in the post-*Booker* context."). However, to the extent that *Ruiz-Terrazas* can be read, as the court below apparently believed, for the proposition that a district court never needs to provide reasons for sentencing a defendant to a within-guideline range sentence, that case predated both *Rita* and *Gall*, and is no longer good law. See *Ruiz-Terrazas*, 477 F.3d at 1203 (recognizing that *Rita* was pending before the Court).

CONCLUSION

For the foregoing reasons, the Court should reverse the judgment below.

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APPENDIX

STATUTORY & GUIDELINE APPENDIX

18 U.S.C. § 3553 – Imposition of a Sentence

(a) Factors To Be Considered in Imposing a Sentence.—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for—

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.[1]

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

* * * *

(c) Statement of Reasons for Imposing a Sentence.—The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence—

(1) is of the kind, and within the range, described in subsection (a)(4), and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or

(2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in a statement of reasons form issued under section 994(w)(1)(B) of title 28, except to the extent that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32 the court shall state that such statements were so received and that it relied upon the content of such statements.

If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public rec-

ord of the court's statement of reasons, together with the order of judgment and commitment, to the Probation System and to the Sentencing Commission,,[3] and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

* * * *

18 U.S.C. § 3582 – Imposition of a sentence of imprisonment

(a) Factors To Be Considered in Imposing a Term of Imprisonment.—The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation. In determining whether to make a recommendation concerning the type of prison facility appropriate for the defendant, the court shall consider any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2).

(b) Effect of Finality of Judgment.—Notwithstanding the fact that a sentence to imprisonment can subsequently be—

(1) modified pursuant to the provisions of subsection (c);

(2) corrected pursuant to the provisions of rule 35 of the Federal Rules of Criminal Procedure and section 3742; or

(3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742;

a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

(c) Modification of an Imposed Term of Imprisonment.—The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction; or

(ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission; and

(B) the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure; and

(2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

* * * *

28 U.S.C. § 991 – United States Sentencing Commission; establishment and purposes

* * * *

(b) The purposes of the United States Sentencing Commission are to—

(1) establish sentencing policies and practices for the Federal criminal justice system that—

(A) assure the meeting of the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code;

(B) provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal con-

duct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices; and

(C) reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process; and

(2) develop means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

28 U.S.C. § 994 – Duties of the Commission

(a) The Commission, by affirmative vote of at least four members of the Commission, and pursuant to its rules and regulations and consistent with all pertinent provisions of any Federal statute shall promulgate and distribute to all courts of the United States and to the United States Probation System—

(1) guidelines, as described in this section, for use of a sentencing court in determining the sentence to be imposed in a criminal case, including—

(A) a determination whether to impose a sentence to probation, a fine, or a term of imprisonment;

(B) a determination as to the appropriate amount of a fine or the appropriate length of a term of probation or a term of imprisonment;

(C) a determination whether a sentence to a term of imprisonment should include a requirement that the defendant be placed on a term of supervised release after imprisonment, and, if so, the appropriate length of such a term;

(D) a determination whether multiple sentences to terms of imprisonment should be ordered to run concurrently or consecutively; and

(E) a determination under paragraphs (6) and (11) [1] of section 3563(b) of title 18;

(2) general policy statements regarding application of the guidelines or any other aspect of sentencing or sentence implementation that in the view of the Commission would further the purposes set forth in section 3553(a)(2) of title 18, United States Code, including the appropriate use of—

(A) the sanctions set forth in sections 3554, 3555, and 3556 of title 18;

(B) the conditions of probation and supervised release set forth in sections 3563(b) and 3583(d) of title 18;

(C) the sentence modification provisions set forth in sections 3563(c), 3564, 3573, and 3582(c) of title 18;

(D) the fine imposition provisions set forth in section 3572 of title 18;

(E) the authority granted under rule 11(e)(2) of the Federal Rules of Criminal Procedure to accept or reject a plea agree-

ment entered into pursuant to rule 11(e)(1); and

(F) the temporary release provisions set forth in section 3622 of title 18, and the prerelease custody provisions set forth in section 3624(c) of title 18; and

* * * *

(p) The Commission, at or after the beginning of a regular session of Congress, but not later than the first day of May, may promulgate under subsection (a) of this section and submit to Congress amendments to the guidelines and modifications to previously submitted amendments that have not taken effect, including modifications to the effective dates of such amendments. Such an amendment or modification shall be accompanied by a statement of the reasons therefor and shall take effect on a date specified by the Commission, which shall be no earlier than 180 days after being so submitted and no later than the first day of November of the calendar year in which the amendment or modification is submitted, except to the extent that the effective date is revised or the amendment is otherwise modified or disapproved by Act of Congress.

* * * *

U.S.S.G. § 1B1.10. Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)

(a) Authority.—

(1) In General.—In a case in which a defendant is serving a term of imprisonment, and the guideline range applicable to that defendant has subsequently been lowered as a result of an amendment to the Guidelines Manual listed

in subsection (d) below, the court may reduce the defendant's term of imprisonment as provided by 18 U.S.C. § 3582(c)(2). As required by 18 U.S.C. § 3582(c)(2), any such reduction in the defendant's term of imprisonment shall be consistent with this policy statement.

(2) Exclusions.—A reduction in the defendant's term of imprisonment is not consistent with this policy statement and therefore is not authorized under 18 U.S.C. § 3582(c)(2) if—

(A) none of the amendments listed in subsection (d) is applicable to the defendant; or

(B) an amendment listed in subsection (d) does not have the effect of lowering the defendant's applicable guideline range.

(3) Limitation.—Consistent with subsection (b), proceedings under 18 U.S.C. § 3582(c)(2) and this policy statement do not constitute a full resentencing of the defendant.

(b) Determination of Reduction in Term of Imprisonment.—

(1) In General.—In determining whether, and to what extent, a reduction in the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement is warranted, the court shall determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (d) had been in effect at the time the defendant was sentenced. In making such determination, the court shall substitute only the amendments listed in subsection (d) for the corresponding guideline provisions that were applied when the defendant

was sentenced and shall leave all other guideline application decisions unaffected.

(2) Limitation and Prohibition on Extent of Reduction.—

(A) Limitation.—Except as provided in subdivision (B), the court shall not reduce the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement to a term that is less than the minimum of the amended guideline range determined under subdivision (1) of this subsection.

(B) Exception for Substantial Assistance.—If the term of imprisonment imposed was less than the term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing pursuant to a government motion to reflect the defendant's substantial assistance to authorities, a reduction comparably less than the amended guideline range determined under subdivision (1) of this subsection may be appropriate.

(C) Prohibition.—In no event may the reduced term of imprisonment be less than the term of imprisonment the defendant has already served.

(c) Cases Involving Mandatory Minimum Sentences and Substantial Assistance.—If the case involves a statutorily required minimum sentence and the court had the authority to impose a sentence below the statutorily required minimum sentence pursuant to a government motion to reflect the defendant's substantial assistance to authorities, then for purposes of this policy statement the amended guideline range shall be determined without regard to the operation

of §5G1.1 (Sentencing on a Single Count of Conviction) and §5G1.2 (Sentencing on Multiple Counts of Conviction).

(d) Covered Amendments.—Amendments covered by this policy statement are listed in Appendix C as follows: 126, 130, 156, 176, 269, 329, 341, 371, 379, 380, 433, 454, 461, 484, 488, 490, 499, 505, 506, 516, 591, 599, 606, 657, 702, 706 as amended by 711, 715, 750 (parts A and C only), and 782 (subject to subsection (e)(1)).

(e) Special Instruction.—

(1) The court shall not order a reduced term of imprisonment based on Amendment 782 unless the effective date of the court's order is November 1, 2015, or later.

Commentary

Application Notes:

1. Application of Subsection (a).—

(A) Eligibility.—Eligibility for consideration under 18 U.S.C. § 3582(c)(2) is triggered only by an amendment listed in subsection (d) that lowers the applicable guideline range (i.e., the guideline range that corresponds to the offense level and criminal history category determined pursuant to §1B1.1(a), which is determined before consideration of any departure provision in the Guidelines Manual or any variance). Accordingly, a reduction in the defendant's term of imprisonment is not authorized under 18 U.S.C. § 3582(c)(2) and is not consistent with this policy statement if: (i) none of the amendments listed in subsection (d) is applicable to the defendant; or (ii) an amendment listed in subsection (d) is applicable to the defendant

but the amendment does not have the effect of lowering the defendant's applicable guideline range because of the operation of another guideline or statutory provision (e.g., a statutory mandatory minimum term of imprisonment).

(B) Factors for Consideration.—

(i) In General.—Consistent with 18 U.S.C. § 3582(c)(2), the court shall consider the factors set forth in 18 U.S.C. § 3553(a) in determining: (I) whether a reduction in the defendant's term of imprisonment is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

(ii) Public Safety Consideration.—The court shall consider the nature and seriousness of the danger to any person or the community that may be posed by a reduction in the defendant's term of imprisonment in determining: (I) whether such a reduction is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

(iii) Post-Sentencing Conduct.—The court may consider post-sentencing conduct of the defendant that occurred after imposition of the term of imprisonment in determining: (I) whether a reduction in the defendant's term of imprisonment is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

* * * *

No. 17-5639

In the Supreme Court of the United States

ADAUCTO CHAVEZ-MEZA, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether the court of appeals correctly affirmed an order granting in part petitioner's motion for a discretionary postjudgment sentence reduction under 18 U.S.C. 3582(c)(2), where it found the record sufficient to show that the district court had permissibly exercised its discretion after considering the relevant factors.

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In the Supreme Court of the United States

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v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals (J.A. 49-60) is reported at 854 F.3d 655. The order of the district court (J.A. 106-108) is unreported.

JURISDICTION

The judgment of the court of appeals (J.A. 61-62) was entered on April 14, 2017. On July 10, 2017, Justice Sotomayor extended the time within which to file a petition for a writ of certiorari to and including August 14, 2017, and the petition was filed on that date. The petition for a writ of certiorari was granted on January 12, 2018. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY AND SENTENCING GUIDELINES PROVISIONS INVOLVED

Pertinent statutes and United States Sentencing Guidelines provisions are reprinted in an appendix to this brief. App., *infra*, 1a-15a.

STATEMENT

Following a guilty plea in the United States District Court for the District of New Mexico, petitioner was convicted of conspiracy to possess methamphetamine with intent to distribute it, in violation of 21 U.S.C. 846, and possession of methamphetamine with intent to distribute it, in violation of 21 U.S.C. 841(b)(1)(A). J.A. 29-30. The district court sentenced him to 135 months of imprisonment, to be followed by five years of supervised release. J.A. 31-32. Following retroactive amendments to the Sentencing Guidelines, petitioner requested a postjudgment reduction of his sentence under 18 U.S.C. 3582(c)(2) to 108 months of imprisonment. J.A. 38-40, 43. The district court granted the motion in part and reduced petitioner's sentence to 114 months of imprisonment. J.A. 45-46; see J.A. 42-43. The court of appeals affirmed. J.A. 49-60.

1. For more than a year, petitioner and two co-conspirators distributed methamphetamine in Albuquerque, New Mexico, in conjunction with the Sinaloa Drug Cartel in Phoenix, Arizona. J.A. 74-75, 77. Petitioner and his co-conspirators typically obtained methamphetamine from a Sinaloa distributor in Phoenix, transported it to Albuquerque, and sold it there. J.A. 74-75. On several occasions, however, they transported methamphetamine to other parts of the western and midwestern United States. J.A. 75.

In 2012, petitioner and his co-conspirators were arrested in a sting operation, during which they had attempted to sell approximately four pounds of methamphetamine to an undercover Federal Bureau of Investigation employee for $58,000. J.A. 71-73, 79. Forensic testing of the drugs seized in the sting revealed a net

weight of approximately 1700 grams of methamphetamine. J.A. 73.

Petitioner was charged with possessing 500 or more grams of a substance containing a detectable amount of methamphetamine, in violation of 21 U.S.C. 841(b)(1)(A)(viii), and with conspiring to do so, in violation of 21 U.S.C. 846. J.A. 14-15. He pleaded guilty to both charges without a plea agreement. J.A. 29-30, 87.

2. The district court sentenced petitioner to 135 months of imprisonment, to be followed by five years of supervised release. J.A. 31-32.

a. In 18 U.S.C. 3553, Congress established a basic framework for a federal court to follow when imposing a criminal sentence. A sentencing court's "overarching duty" is to impose a "'sentence sufficient, but not greater than necessary' to comply with the sentencing purposes set forth in [18 U.S.C.] 3553(a)(2)." *Pepper* v. *United States*, 562 U.S. 476, 491 (2011) (quoting 18 U.S.C. 3553(a)). In carrying out that responsibility, the court is to consult a variety of factors, including the Sentencing Guidelines promulgated by the United States Sentencing Commission (Commission). *Id.* at 490. Since *United States* v. *Booker*, 543 U.S. 220 (2005), the Guidelines have been advisory, not mandatory, in that context: "although a sentencing court must 'give respectful consideration to the Guidelines, *Booker* permits the court to tailor the sentence in light of other statutory concerns as well.'" *Pepper*, 562 U.S. at 490 (quoting *Kimbrough* v. *United States*, 552 U.S. 85, 101 (2007)).

Section 3553(c) separately requires the sentencing court, "at the time of sentencing, [to] state in open court the reasons for its imposition of the particular sentence." 18 U.S.C. 3553(c). For a sentence within an advisory

guidelines range that exceeds 24 months, the court must further state "the reason for imposing a sentence at a particular point within the range." 18 U.S.C. 3553(c)(1). For a sentence "outside the [guidelines] range," the court must state—and must record in writing "with specificity in a statement of reasons form"—"the specific reason for the imposition of a sentence different from" the recommended guidelines range. 18 U.S.C. 3553(c)(2). The court is required to provide a copy of its statement of reasons to the Sentencing Commission, to the Probation Office, and (if the defendant is sentenced to a term of imprisonment) to the Bureau of Prisons. 18 U.S.C. 3553(c).

b. In petitioner's case, the district court calculated an advisory guidelines range of 135 to 168 months of imprisonment, based on a total offense level of 33 and a criminal history category of I. J.A. 25, 87. Petitioner requested a variance below the guidelines range in light of his history and family circumstances, J.A. 21-23, while the government contended that a within-Guidelines sentence was appropriate in light of the severity of the offense, J.A. 20-21.

The district court imposed a sentence of 135 months of imprisonment, at the bottom of the advisory guidelines range. J.A. 31. The court explained that it had "consulted the sentencing factors of 18 U.S.C. 3553(a)(1) through (7)." J.A. 25. It noted that one "reason the guideline sentence is high in this case, even the low end of 135 months, is because of the [drug] quantity." *Ibid.* The court observed that petitioner had "distributed 1.7 kilograms of actual methamphetamine," which was "a significant quantity." *Ibid.* The court further noted that "one of the other reasons that the pen-

alty is severe in this case, is because of methamphetamine." *Ibid.* The judge explained that he had "been doing this a long time, and from what [he] gather[ed] and what [he had] seen, methamphetamine, it destroys individual lives, it destroys families, it can destroy communities." *Ibid.*

Petitioner filed a notice of appeal but then voluntarily dismissed his appeal. D. Ct. Doc. 127, at 1 (July 22, 2013); D. Ct. Doc. 166-1, at 1 (Jan. 21, 2014); see J.A. 4-5.

3. The district court subsequently reduced petitioner's sentence to 114 months of imprisonment, pursuant to 18 U.S.C. 3582(c)(2). J.A. 45-46; see J.A. 42-43.

a. A court generally "may not modify a term of imprisonment once it has been imposed." 18 U.S.C. 3582(c); see *Dillon* v. *United States*, 560 U.S. 817, 819 (2010). Section 3582(c)(2), however, creates a "narrow exception[]" to that rule, *Dillon*, 560 U.S. at 827, under which a district court "may reduce" a defendant's sentence if the defendant was "sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(*o*)," 18 U.S.C. 3582(c)(2). In such a case, Section 3582(c)(2) permits—but does not compel—a court to "reduce the term of imprisonment" after "considering" the statutory sentencing factors set out in Section 3553(a), "if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." *Ibid.*

The relevant policy statement, Sentencing Guidelines § 1B1.10, instructs that a court should substitute the revised guidelines range for the original guidelines range, while "leav[ing] all other guideline application decisions unaffected." *Id.* § 1B1.10(b)(1); see *Dillon*,

560 U.S. at 821. The court "may then grant a reduction within the amended Guidelines range if it determines that one is warranted 'after considering the factors set forth in section 3553(a) to the extent that they are applicable.'" *Dillon*, 560 U.S. at 822 (citation omitted). And "in limited circumstances," the court may reduce a sentence below the amended range. *Ibid.*; see Sentencing Guidelines § 1B1.10(a)(1). The commentary to the relevant policy statement emphasizes that "the sentencing court has the discretion to determine whether, and to what extent, to reduce a term of imprisonment." Sentencing Guidelines § 1B1.10, comment. (n.3); see *Stinson* v. *United States*, 508 U.S. 36, 42-43 (1993) (noting significance of the commentary).

Although it allows for a modification to an existing sentence within specified parameters, Section 3582(c)(2) "does not authorize a sentencing or resentencing proceeding." *Dillon*, 560 U.S. at 825. Sentencing Guidelines § 1B1.10, for example, cautions that "proceedings under 18 U.S.C. § 3582(c)(2) and this policy statement do not constitute a full resentencing of the defendant," *id.* § 1B1.10(a)(3), and a defendant has no entitlement to be present in court for any such proceedings, see Fed. R. Crim. P. 43(a)(3) and (b)(4). A court's consideration of a Section 3582(c)(2) sentence reduction is also not subject to any provision analogous to Section 3553(c), which requires an explanation of a sentence at the time it is originally imposed.

b. In 2014, the Sentencing Commission issued Amendment 782 to the Sentencing Guidelines. See Sentencing Guidelines App. C Supp., Amend. 782 (Nov. 1, 2014) (Amend. 782). Amendment 782 revised Sentencing Guidelines §§ 2D1.1 and 2D1.11, which provide

drug-quantity tables for controlled substances, including methamphetamine, and their precursors. Amend. 782. The amendment effectively reduced by two levels the base offense level for defendants like petitioner. *Ibid.* The Commission also determined that Amendment 782 should apply retroactively. Sentencing Guidelines App. C Supp., Amend. 788 (Nov. 1, 2014); see Sentencing Guidelines § 1B1.10(d). With that retroactive two-level adjustment, petitioner's advisory guidelines range would be 108 to 135 months of imprisonment. J.A. 64.

In 2015, petitioner filed a motion under 18 U.S.C. 3582(c)(2) to reduce his sentence in light of Amendment 782. J.A. 38-40. In response, the Probation Office submitted a memorandum to the district court regarding the application of Amendment 782 to petitioner's case. J.A. 63-65. The memorandum noted that, according to a Bureau of Prisons disciplinary report, petitioner had been sanctioned for improperly using another inmate's phone number, and had as a result lost work privileges for 180 days and phone privileges for 30 days. J.A. 64-65. That violation, assigned a severity code of 397, J.A. 64, qualifies as a moderate-severity-level prohibited act. See Fed. Bureau of Prisons, U.S. Dep't of Justice, *Inmate Discipline Program* 49, 52 (July 8, 2011), www.bop.gov/policy/progstat/5270_009.pdf. The memorandum also noted that petitioner had completed a drug-abuse program, was attempting to enroll in a nonresidential drug-abuse program, and had completed various education courses. J.A. 65.

The government and petitioner subsequently stipulated that petitioner was eligible for a reduced sentence within the revised guidelines range of 108 to 135 months of imprisonment. J.A. 42. The stipulation noted, as had the Probation Office's memorandum, that petitioner

had been sanctioned while incarcerated, but the government agreed that the misconduct was "not disqualifying in considering the 18 U.S.C. § 3553(a) sentencing factors." J.A. 43. The government did not take a position on the appropriate sentence within the revised guidelines range. See *ibid.* Petitioner, however, requested a sentence of 108 months, at the bottom of the revised range. *Ibid.* He noted that, in imposing his original sentence, the district court had explained that the drug quantity was a significant factor and had found a sentence at the "low end of the guideline range" appropriate. *Ibid.* Petitioner also stressed his completion of various educational courses while incarcerated. *Ibid.*

The district court issued an order "[g]rant[ing]" petitioner's motion in part and reducing his term of imprisonment from 135 months to 114 months. J.A. 106-108 (capitalization omitted). The court entered its order on a form issued by the Administrative Office of the United States Courts, Form AO-247. *Ibid.* In completing the form, the court set forth the calculation of petitioner's revised guidelines range and confirmed that "[t]he reduced sentence is within the amended guideline range." J.A. 108. The court also certified that it had "considered [petitioner's] motion" and had "tak[en] into account the policy statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable." J.A. 106-107. Petitioner did not seek reconsideration or clarification of the court's order.

4. The court of appeals affirmed. J.A. 49-60.

The court of appeals rejected petitioner's contention that the district court had erred "by failing to adequately explain how it applied the § 3553(a) factors in imposing a 114-month sentence." J.A. 50. The court of

appeals observed that although Section 3582(c)(2) requires district courts "'to *consider* the factors in 18 U.S.C. § 3553(a),'" it "'does not mention § 3353(c),'" which imposes an "explanatory requirement" on district courts when they apply those factors in the context of an original sentencing. J.A. 53 (citation omitted). The court of appeals emphasized the textual differences between Section 3553(a), which "nowhere imposes on the court a duty to address [the Section 3553(a)] factors on the record," and Section 3553(c), which "speaks expressly to the nature of the district court's duty to explain itself on the record." *Ibid.* And the court determined that "[i]t would be incongruous * * * to read a duty of explanation into subsection (a) when the exact matter has already been considered and addressed by Congress in subsection (c)." J.A. 53-54.

The court of appeals added that, in any event, "the requirements imposed on a [district] court at a sentence-reduction proceeding cannot be greater than those imposed at an original sentencing proceeding." J.A. 54; see *ibid.* ("The original sentencing procedures required by § 3553(c) must therefore supply the ceiling for sentence-reduction procedures."). The court observed that even the "original sentencing proceedings" to which Section 3553(c) applies "do not require extensive explanations for sentences within the guidelines range," but instead require "'only a general statement noting the appropriate guideline range and how it was calculated'"—a requirement "'amply fulfill[ed]'" by a "court's 'citation of the presentence report's calculation method and recitation of the suggested imprisonment range.'" J.A. 55 (brackets and citations omitted). The court accordingly reasoned that "the same 'general statement noting the appropriate guideline range and how it was

calculated' in applying § 3553(a)" at an original sentencing "also suffices in sentence-reduction proceedings." J.A. 56. Thus, "a district court completing form AO-247 need not explain choosing a particular guidelines-range sentence." *Ibid.*

Applying those principles here, the court of appeals determined that "[n]othing indicates in this case" that "the district court failed to consider the § 3553(a) factors or otherwise abused its discretion." J.A. 57. The court of appeals observed that "[t]he first page" of the order "signed by the [district] judge"—on a form generated by the Administrative Office of the United States Courts—"indicate[d] that [the district court] ha[d] 'taken into account the policy statement set forth at USSG § 1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a).'" *Ibid.* (brackets and citation omitted). The court of appeals further observed that "[t]he (sealed) second page" of the order "correctly indicates the amended guidelines range." *Ibid.* The court thus found it "safe to infer from the [district] court's rejection of the low-end-of-the-range sentence that it carefully considered the materials (which included an incident of misconduct while in prison) presented to it by the parties." *Ibid.*

The court of appeals acknowledged "the need for a district court to create a meaningful basis for appellate review and to promote the perception of fairness." J.A. 60 (quoting *United States* v. *Verdin-Garcia*, 824 F.3d 1218, 1222 (10th Cir. 2016), cert. denied, 137 S. Ct. 2263 (2017)). But given the absence of a statutory requirement for an explanation and the background principle that appellate courts "'presume, absent some indication in the record suggesting otherwise, that trial judges

* * * know the law and apply it in making their decisions,'" the court was "persuaded that § 3582 does not require more explanation than was provided here." J.A. 56, 58 (quoting *United States* v. *Ruiz-Terrazas*, 477 F.3d 1196, 1201 (10th Cir.) (Gorsuch, J.), cert. denied, 552 U.S. 850 (2007)).[1]

SUMMARY OF ARGUMENT

The court of appeals correctly affirmed the district court's postjudgment reduction of petitioner's sentence under 18 U.S.C. 3582(c)(2). A Section 3582(c)(2) sentence reduction is not "a plenary resentencing proceeding," but is instead a "congressional act of lenity" that allows an eligible defendant's sentence to be lowered in light of a retroactive amendment to the Sentencing Guidelines. *Dillon* v. *United States*, 560 U.S. 817, 826, 828 (2010). The district court here made clear that it considered the applicable factors when it exercised its discretion to reduce petitioner's sentence to a level expressly authorized by the Sentencing Commission. Petitioner identifies nothing that required the court to make a more extensive statement.

A. When a district court grants a sentence-reduction motion and indicates that in so doing it considered the sentencing factors that Congress outlined in 18 U.S.C. 3553(a), the statute does not require the court to further explain why it did not reduce the defendant's sentence even more. The district court's only statutory obligation, after determining that a defendant is eligible for a reduced sentence, is to "consider[]" any Section 3553(a)

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[1] The court of appeals reserved judgment on whether a more extensive explanation might be required when a defendant is eligible for and requests a reduction below his amended guidelines range, J.A. 55 n.1, or when a district court rejects a sentence-reduction motion altogether, J.A. 56 n.2.

factors that it deems "applicable." 18 U.S.C. 3582(c)(2). To the extent the court determines that those factors weigh in favor of a reduced sentence that is within, but not at the bottom of, the amended guidelines range, the court has no duty to include a particularized discussion of the Section 3553(a) factors in its sentence-reduction order.

Congress expressly required a district court at an *original* sentencing proceeding to explain on the record "the reasons for its imposition of the particular sentence," 18 U.S.C. 3553(c), but omitted such a requirement from sentence-reduction determinations under Section 3582(c)(2). That strongly indicates that the statutory directive to "consider[]" applicable Section 3553(a) factors in evaluating a sentence reduction does not mandate on-the-record explanation. As the court of appeals reasoned, "[i]t would be incongruous * * * to read a duty of explanation into [Section 3553(a)] when the exact matter has already been considered and addressed by Congress in [Section 3553(c)]." J.A. 53-54. The requirement to explain a sentence was a new innovation at the time Sections 3553(c) and 3582(c)(2) were enacted, and Congress's reasons for imposing it in original sentencing proceedings did not carry over to Section 3582(c)(2) determinations, which are far more limited in scope and have substantially fewer procedural requirements.

B. Petitioner nevertheless asks this Court to impose on Section 3582(c)(2) determinations an explanatory requirement comparable to Section 3553(c). His request is based not on any statutory text or constitutional imperative but on an asserted need for such a requirement as a prerequisite to meaningful appellate review. Neither petitioner's reliance on *United States* v. *Taylor*,

487 U.S. 326 (1988), nor any of his other arguments, supports the judicial creation of such an extratextual mandate.

First, Congress has the power to define the degree of explanation required, and in the Section 3582(c)(2) context—unlike in the other contexts to which petitioner analogizes—it has indicated that it intended to forgo an on-the-record explanatory requirement. Second, this Court, in *Taylor* and elsewhere, has emphasized the need for sufficient explanation only when a district court departs from an established legal framework or a justified result. That concern does not apply here, where the district court selected a sentence within the revised guidelines range. Third, the level of explanation necessary to enable meaningful appellate review varies with the appropriate scope of such review. In the Section 3582(c)(2) context, appellate courts engage in only limited review of a district court's grant of a within-Guidelines sentence reduction. And they are fully equipped to perform such review without a detailed explanation requirement of the sort that petitioner would impose.

C. The court of appeals in this case properly applied those principles in affirming the district court's judgment. As the court of appeals explained, "[n]othing indicates in this case [that] the district court failed to consider the § 3553(a) factors or otherwise abused its discretion" in reducing petitioner's sentence to 114 months, rather than to the lowest possible level of 108 months. J.A. 57. To the contrary, the district court expressly affirmed that it had "considered" petitioner's arguments and had "tak[en] into account" both the Section 3553(a) factors and the relevant policy statement from the Sentencing Commission. J.A. 106-107. And,

as is necessarily the case with all procedurally proper Section 3582(c)(2) sentence reductions, the final sentence accords with the judgment of the Sentencing Commission that the sentence imposed is generally appropriate in such a case.

The district court's judgment would still warrant affirmance even if this Court were to adopt petitioner's proposal to transpose the explanatory requirements for original sentencing proceedings set forth in *Rita* v. *United States*, 551 U.S. 338 (2007), to the sentence-reduction context. *Rita* recognizes that district courts do not typically need to provide extended explanations for within-Guidelines sentences like the one imposed here. See *id.* at 356-357. And if the district court's selection of a 114-month sentence would have survived review under *Rita*, it is sufficient even under the approach petitioner advocates.

ARGUMENT

DISTRICT COURTS NEED NOT PROVIDE AN EXTENSIVE EXPLANATION FOR A SECTION 3582(c)(2) SENTENCE REDUCTION WITHIN A REVISED GUIDELINES RANGE

The "narrow exception" to sentence finality in 18 U.S.C. 3582(c)(2) "does not authorize a sentencing or resentencing proceeding." *Dillon* v. *United States*, 560 U.S. 817, 825, 827 (2010). It instead allows, but does not require, a district court to make a circumscribed modification to an "otherwise final sentence." *Id.* at 825. Consistent with the provision's qualified nature, sentence-reduction determinations under Section 3582(c)(2) are not subject to the full panoply of procedures applicable at an original sentencing. In particular, they are not subject to 18 U.S.C. 3553(c)'s requirement that the sentencing court "state in open court the reasons for its imposition of the particular sentence."

The Court should decline petitioner's invitation to engraft such an on-the-record explanatory requirement onto Section 3582(c)(2) and to reverse the court of appeals' judgment in circumstances where it found the record sufficient for purposes of appellate review.

A. The Limited Procedures For Section 3582(c)(2) Sentence Reductions Do Not Require A Specific Explanation Of A Reduced Within-Guidelines Sentence

A district court's consideration of a sentence reduction under 18 U.S.C. 3582(c)(2) is governed by different statutory provisions, serves different purposes, and involves different procedures than the original imposition of a sentence. The distinctions between the two frameworks make clear that no particular form of explanation is required when the district court exercises its discretion to reduce a defendant's sentence to a level within a retroactively amended guidelines range.

1. Courts generally "may not modify a term of imprisonment once it has been imposed." 18 U.S.C. 3582(c); see Fed. R. Crim. P. 35, advisory committee's notes (1991 Amendments) (explaining that a sentencing court lacks authority "to reconsider the application or interpretation of the sentencing guidelines" or "simply to change its mind about the appropriateness of the sentence"). Section 3582(c)(2), however, "establishes an exception to the general rule of finality." *Dillon*, 560 U.S. at 824. It provides a mechanism for district courts to reduce a term of imprisonment in light of subsequent retroactive changes to the advisory Sentencing Guidelines. *Id.* at 825. That procedure for modifying otherwise-final sentences is not "constitutionally compelled," but is instead a "congressional act of lenity" that gives imprisoned defendants "the benefit of later enacted adjustments" to the Guidelines. *Id.* at 828.

Section 3582(c)(2) affords district courts "circumscribed discretion" to reduce a sentence if certain requirements are met. *Dillon*, 560 U.S. at 829. A sentence reduction is permissible only where (1) the Sentencing Commission has amended the Guidelines; (2) the Commission has determined that the amendment applies retroactively; and (3) the amendment has the effect of lowering the sentencing range on which a particular defendant's sentence was "based." 18 U.S.C. 3582(c)(2); see Sentencing Guidelines § 1B1.10(a)(2). If all three conditions are met, the district court "may"—not must—"reduce the term of imprisonment, after considering the factors set forth in [18 U.S.C.] 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. 3582(c)(2).

Applying Section 3582(c)(2) requires a "two-step inquiry." *Dillon*, 560 U.S. at 826. First, the district court must determine whether the defendant is eligible for a reduction at all, *i.e.*, whether a retroactive Guidelines amendment applies to the defendant's sentence, and whether a reduction of that sentence is consistent with Sentencing Guidelines § 1B1.10. *Dillon*, 560 U.S. at 827. Second, if the defendant is eligible for a sentence reduction, the district court must consider the applicable sentencing factors in 18 U.S.C. 3553(a) and "determine whether, in [the court's] discretion, the reduction authorized * * * is warranted in whole or in part under the particular circumstances of the case." *Dillon*, 560 U.S. at 827.

2. Congress enacted Section 3582(c)(2) as part of the Sentencing Reform Act of 1984, Pub. L. No. 98-473, Tit. II, ch. II, § 212(a)(2), 98 Stat. 1999. In the same

section of that Act, Congress also established a framework for original sentencing proceedings, codified at 18 U.S.C. 3553. See Sentencing Reform Act of 1984, Pub. L. No. 98-473, Tit. II, ch. II, § 212(a)(2), 98 Stat. 1989. Although the statutory requirements for original sentencings include a specific explanation requirement, the statutory requirements for consideration of a sentence reduction under Section 3582(c)(2) do not.

Section 3553 prescribes two features of original sentencing proceedings that are relevant here. First, Section 3553(a) sets forth the "factors to be considered in imposing a sentence," including "the nature and circumstances of the offense and the history and characteristics of the defendant," the various justifications for punishment, and the relevant Sentencing Guidelines range. 18 U.S.C. 3553(a) (capitalization omitted). Second, Section 3553(c) requires a "statement of reasons for imposing a sentence." 18 U.S.C. 3553(c) (capitalization omitted). More specifically, it requires that a "court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence." *Ibid.* If that sentence falls within the advisory guidelines range and that range exceeds 24 months, the court must further state "the reason for imposing a sentence at a particular point within the range." 18 U.S.C. 3553(c)(1).

In Section 3582(c)(2), Congress did not import Section 3553's sentencing procedures wholesale. Instead, Congress provided that, after a retroactive Guidelines amendment, "the court may reduce the term of imprisonment" for an eligible defendant "after *considering the factors set forth in section 3553(a)* to the extent that they are applicable," if the reduction is consistent with Commission policy statements. 18 U.S.C. 3582(c)(2)

(emphasis added). Although Section 3582(c)(2) incorporates the consideration requirement from Section 3553(a), it does not similarly incorporate the explanation requirement from Section 3553(c). Thus, unlike in original sentencing proceedings—where Section 3553(c) requires a district court to "state in open court the reasons for its imposition of the particular sentence" and, for certain sentences, to specify "the reason for imposing a sentence at a particular point within the [Guidelines] range," 18 U.S.C. 3553(c)—Congress did not require courts to specifically explain their discretionary sentence-reduction determinations. A district court's only statutory obligation, after determining that a defendant is eligible for a reduced sentence, is to "consider[]" any applicable Section 3553(a) factors. 18 U.S.C. 3582(c)(2).

Where Congress incorporates one procedural requirement and not another, courts should give meaning to that choice. "This Court adheres to the general principle that Congress' use of explicit language in one provision cautions against inferring the same limitation in another provision." *State Farm Fire & Cas. Co.* v. *United States ex rel. Rigsby*, 137 S. Ct. 436, 442 (2016) (citation and internal quotation marks omitted); see generally Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012) (explaining canon of "*expressio unius est exclusio alterius*," or "[t]he expression of one thing implies the exclusion of others"). As the court of appeals explained, see J.A. 53-54, the fact that Congress expressly required a district court in Section 3553(c) to explain on the record the reasons for the sentence imposed, but omitted such

a requirement from Section 3582(c)(2), strongly indicates that Section 3582(c)(2) does not similarly mandate an on-the-record explanation.

3. That textual inference is reinforced by the legal backdrop against which the Sentencing Reform Act was enacted. As petitioner recognizes (Br. 19), before the Sentencing Reform Act, "district courts generally had no obligation to state their reasons for imposing any particular sentence." See, *e.g.*, *Dorszynski* v. *United States*, 418 U.S. 424, 440-442 (1974). The relevant Senate Report accordingly explained that Section 3553(c) imposed "a *new* requirement that the court give the reasons for the imposition of the sentence at the time of sentencing." S. Rep. No. 225, 98th Cong., 1st Sess. 79 (1983) (emphasis added) (Senate Report). Had Congress intended to carry over to sentence-reduction determinations what petitioner himself describes (Br. 21) as a "sea change in federal sentencing law," it would have said so explicitly.

That is particularly so because the reasons for the change in the context of original sentencing proceedings do not clearly translate to the distinct context of postjudgment sentence modifications. In original sentencing proceedings, unlike in Section 3582(c)(2) determinations, the court can set a defendant's sentence at a level that does not accord with the Sentencing Guidelines. Even before *United States* v. *Booker*, 543 U.S. 220 (2005), rendered the Guidelines effectively advisory in original sentencings, it was possible for a court to impose a sentence outside the prescribed guidelines range in exceptional cases, see Sentencing Guidelines § 5K2.0 (2002); see also Sentencing Guidelines § 4A1.3 (2000) (criminal history departures), and until the passage of the PROTECT Act, Pub. L. No. 108-21, 117 Stat. 650, in

2003, courts exercised considerable discretion in deciding whether to do so. See, *e.g.*, *Mistretta* v. *United States*, 488 U.S. 361, 367 (1989) (noting that, although the Sentencing Reform Act makes the Guidelines binding on sentencing courts, "it preserves for the judge the discretion to depart from the guideline applicable to a particular case"). A sentence reduction under Section 3582(c)(2), however, necessarily comports with the Sentencing Guidelines. It can be triggered only by a retroactive amendment to a guidelines range on which the defendant's sentence is "based," and it must be "consistent with applicable policy statements issued by the Sentencing Commission," 18 U.S.C. 3582(c)(2), which remain binding in the sentence-reduction context even after *Booker*, see *Dillon*, 560 U.S. at 821.

The explanation requirement of Section 3553(c) is most directly focused on outside-Guidelines sentences. The requirement is the most stringent, see 18 U.S.C. 3553(c)(2), and serves the most purpose, see Senate Report 79-80, in that circumstance. Only in that circumstance did Congress specifically prescribe that "fail[ure] to provide the written statement of reasons" in itself constitutes reversible error on appeal. 18 U.S.C. 3742(e)(3)(A). Although the Sentencing Reform Act has always provided for appeals "irrespective of whether the trial judge sentences within or outside the Guidelines range," *Booker*, 543 U.S. at 260, it has included particularized provisions identifying outside-range sentences (or sentences for which no range has been prescribed) as automatically eligible for appeal, see, *e.g.*, 18 U.S.C. 3742(a)(3)-(4) and (b)(3)-(4). Congress accordingly viewed a statement of reasons as "especially important" for non-Guidelines sentences, because it would "play an important role in the evaluation of the

reasonableness of the sentence" on appeal. Senate Report 80; cf. *Gall* v. *United States*, 552 U.S. 38, 50 (2007) (explaining that a "more significant justification" is required to support a greater variance from the guidelines range). And Congress's other grounds for requiring such a statement—"inform[ing] the defendant and the public of the reasons for the sentence," "provid[ing] information to criminal justice researchers evaluating the effectiveness of various sentencing practices," and "assist[ing] the Sentencing Commission in its continuous reexamination of its guidelines and policy statements," Senate Report 80—are likewise most pertinent when the court's view of the appropriate sentence diverges from the Commission's.

Congress recognized, however, that the need for a particularized sentencing explanation is less acute, even in the context of an original sentencing, when the defendant's sentence accords with the Sentencing Commission's own judgment. "[W]hen a judge decides simply to apply the Guidelines to a particular case, doing so will not necessarily require lengthy explanation," because "[c]ircumstances may well make clear that the judge rests his decision upon the Commission's own reasoning that the Guidelines sentence is a proper sentence * * * in the typical case, and that the judge has found that the case before him is typical." *Rita* v. *United States*, 551 U.S. 338, 356-357 (2007). Unless a defendant challenges the Guidelines themselves "or argues for departure, the judge normally need say no more" than is necessary to indicate his or her determination that a Guidelines sentence is appropriate. *Id.* at 357; see *id.* at 345, 358 (recounting sentencing court's explanation that the guidelines range was "appropriate" and "the public needs to be protected") (citations omitted). Section

3553(c)(1) accordingly requires the court to state "the reason for imposing a sentence at a particular point within" a guidelines range only when "that range exceeds 24 months." 18 U.S.C. 3553(c)(1). Such a range encompasses a wide enough variety of sentences that a refined explanation of the sentence may be particularly helpful to the defendant in understanding the sentence, to an appellate court in reviewing it, to the Commission in obtaining feedback on the application of the range, or to the entities charged with carrying out the sentence. See *Rita*, 551 U.S. at 357-358.

The limited reasons for providing a particularized explanation of a within-Guidelines sentence at an original sentencing carry even less weight in the context of a sentence-reduction determination under Section 3582(c)(2). In a Section 3582(c)(2) determination, the district court has already imposed the original sentence and given the explanation for that sentence that Section 3553(c) required. Its grant of a reduction presumably reflects its agreement with the Commission's determination that a lower sentence is generally warranted for a certain class of offense and offender. Cf. *Rita*, 551 U.S. at 356-357. Any concern with providing feedback to the Commission, to officials at the prison where the defendant is housed, or to other sentencing observers, is at its nadir when the court is simply applying a retroactive judgment the Commission has already made to a specific defendant who is already serving a previously imposed sentence. Even if the court does not reduce the sentence to the greatest extent possible, the court will already be on record as to its views of the defendant's case for purposes of the original sentence; the limited and focused nature of the court's deliberations under Section 3582(c)(2) will typically make apparent

any additional factors (such as post-sentencing conduct) that the judge considered; and the reduced sentence will necessarily be one that the Commission itself has deemed appropriate for such a defendant.

The absence of a specific requirement for a particularized explanation in every Section 3582(c)(2) case thus reflects a reasonable congressional determination that one would not typically be necessary. "The appropriateness of brevity or length, conciseness or detail, when to write, what to say, depends upon circumstances. Sometimes a judicial opinion responds to every argument; sometimes it does not; sometimes a judge simply writes the word 'granted' or 'denied' on the face of a motion while relying upon context and the parties' prior arguments to make the reasons clear. The law leaves much, in this respect, to the judge's own professional judgment." *Rita*, 551 U.S. at 356. Although considerations particular to the new regime of the Sentencing Reform Act called for more specific explanation requirements in the context of original sentencings, Congress was evidently comfortable relying on default norms of professional judicial judgment in the more circumscribed context of sentence reductions.

4. Congress's reliance on background principles of judicial discretion, rather than statutory explanation requirements, for Section 3582(c)(2) determinations is of a piece with the less rigid nature of such determinations overall.

Consistent with the limited scope of Section 3582(c)(2) determinations and their function as an act of legislative grace, fewer and less onerous structural and procedural requirements apply than in original sentencing proceedings. See *Dillon*, 560 U.S. at 827-828. For example,

although Federal Rule of Criminal Procedure 43 requires a sentencing hearing at which the defendant is present, it expressly exempts any Section 3582(c)(2) proceedings from that requirement. See Fed. R. Crim. P. 43(a)(3) and (b)(4). Nor does any right to counsel apply during any Section 3582(c)(2) proceedings. See, *e.g.*, *United States* v. *Webb*, 565 F.3d 789, 794 (11th Cir. 2009) (per curiam) (collecting court of appeals decisions). And the policy statement applicable to Section 3582(c)(2) determinations confirms that "proceedings under 18 U.S.C. § 3582(c)(2) and this policy statement do not constitute a full resentencing of the defendant." Sentencing Guidelines § 1B1.10(a)(3).

The "fundamental differences between sentencing and sentence-modification proceedings" underscore that Congress did not create an entitlement to another full round of sentencing proceedings. *Dillon*, 560 U.S. at 830; see *id.* at 825 (noting that, "[b]y its terms, § 3582(c)(2) does not authorize a sentencing or resentencing proceeding"). Congress provided only a discrete grant of authority to a district court to determine, without a hearing or other significant procedural requirements, whether to exercise lenity. It would make little sense to impose a formal explanatory requirement when Congress elected to ratchet down the formality of any proceedings.

B. Petitioner's Proposed Explanation Requirement Lacks Foundation

Petitioner provides no sound basis for imposing an extratextual explanatory requirement on district courts in making Section 3582(c)(2) determinations. He recognizes that sentence-reduction procedures are "not constitutionally compelled," Pet. Br. 23 (citation omitted), and acknowledges that his proposed approach also does

not arise "from any statutory command," *id.* at 22. Nothing supports the adoption of his rule as a matter of judicial invention.

1. The incorporation of Section 3553(a) considerations into Section 3582(c)(2) does not imply the existence of an explanation requirement

To the extent petitioner attempts to ground his position in existing law, he relies (Br. 7) on an asserted principle "set forth in *United States* v. *Taylor*, 487 U.S. 326 (1988), that where a statute requires district courts to consider certain factors, the court must clearly articulate how those factors affected its decision." But even if such a principle existed, Section 3582(c)(2)'s incorporation of the Section 3553(a) factors, without incorporating Section 3553(c)'s explanation requirement, would not implicate it.

a. Petitioner identifies a key flaw in his own position when he contends (Br. 24) that "[r]equiring district courts to explain their decision in a § 3582(c)(2) proceeding is, in effect, no different than requiring them to explain their original sentencing decision." Importing Section 3553(c) into the sentence-reduction context would nullify Congress's decision to establish an explanatory requirement for original sentencing proceedings, while declining to do so for more streamlined sentence-reduction determinations.

The courts of appeals that have imposed an explanatory requirement in the Section 3582(c)(2) context have uniformly overlooked the strong *expressio unius* implication in Congress's incorporation of Section 3553(a) but not Section 3553(c). In each of the decisions on which petitioner relies (Br. 15), the court failed even to mention Section 3553(c). See *United States* v. *Christie*, 736 F.3d 191 (2d Cir. 2013); *United States* v. *Howard*,

644 F.3d 455 (6th Cir. 2011); *United States* v. *Marion*, 590 F.3d 475 (7th Cir. 2009). By contrast, when courts of appeals have grappled with the textual differences between the statutory provisions governing original sentencing proceedings and sentence-reduction determinations, they have rejected the contention that a district court's decision should be vacated for failure to provide a sufficient on-the-record explanation for the sentence reduction ordered. See J.A. 53-54; *United States* v. *Smalls*, 720 F.3d 193, 198 (4th Cir. 2013); *United States* v. *Evans*, 587 F.3d 667, 672-674 (5th Cir. 2009), cert. denied, 561 U.S. 1011 (2010).

b. Petitioner's view (Br. 13-15, 22) that *Taylor*'s consideration of the Speedy Trial Act's remedial provision, 18 U.S.C. 3162(a)(2), controls the interpretation of the Sentencing Reform Act is accordingly mistaken. He does not dispute that Congress has the power to prescribe the degree of explanation required when a sentencing court reduces an otherwise-final sentence. See *Mistretta*, 488 U.S. at 364 ("Congress, of course, has the power to fix the sentence for a federal crime, and the scope of judicial discretion with respect to a sentence is subject to congressional control.") (citation omitted). Because the inquiry is ultimately one of legislative intent, Congress's choice of statutory scheme matters. And the statutory scheme here differs markedly from the statutory scheme in *Taylor*.

The Speedy Trial Act provision in *Taylor* stated that district courts "shall consider" several listed factors "[i]n determining whether to dismiss the case with or without prejudice." 18 U.S.C. 3162(a)(2). This Court reasoned that "Congress ha[d] declared that a decision will be governed by consideration of particular factors"

and had thus required district courts to "clearly articulate [those factors'] effect in order to permit meaningful appellate review." *Taylor*, 487 U.S. at 336-337. The Court deemed such an articulation necessary to determine whether the district court had "fail[ed] to act within the limits prescribed by Congress." *Id.* at 337. In other words, it believed that more explanation would effectuate congressional intent.

The "limits prescribed by Congress," *Taylor*, 487 U.S. at 337, in Section 3582(c)(2) differ from the limits prescribed by Congress in the Speedy Trial Act in fundamental ways. As a threshold matter, the Speedy Trial Act scheme considered in *Taylor* did not involve any analogue to Section 3553(c)'s explicit requirement to provide a statement of "the reasons for [the] imposition of the particular sentence." Here, in contrast, the omission of Section 3553(c) from Section 3582(c)(2)'s instruction that sentencing courts "consider[]" the Section 3553(a) factors "to the extent that they are applicable," 18 U.S.C. 3582(c)(2), illustrates that Congress did not intend to incorporate an explanatory requirement and overcomes any default principle that *Taylor* might reflect.

But even setting that dispositive textual difference aside, an on-the-record explanation is, at least in most cases, not necessary for a court of appeals to determine whether the district court has "fail[ed] to act within the limits prescribed by Congress" when granting a sentence reduction under Section 3582(c)(2) to a level within the lowered guidelines range. *Taylor*, 487 U.S. at 337. Such a reduction (presuming the defendant is eligible) necessarily fits within the "limits" that Congress has empowered the Commission to prescribe. See

Dillon, 560 U.S. at 828. And the district court's constrained discretion under Section 3553(a) to select a specific term within an approved range—which encompasses a number of reasonable outcomes that vary only incrementally—does not raise the same concerns as a district court's binary decision about whether to dismiss an indictment under the Speedy Trial Act.

c. *Taylor* and the other decisions on which petitioner relies did not adopt a one-size-fits-all rule requiring appellate courts to remand whenever district courts do not extensively discuss their reasoning under a statute that mandates the consideration of multiple factors. Petitioner errs in asserting (Br. 22) that "[t]he simple reason" this Court remanded in those cases is that "lower courts insufficiently explained *how* they exercised their discretion." Instead, the Court has deemed a district court's explanation insufficient only when case-specific concerns indicate that a district court abused its discretion by weighing factors improperly or by departing from an established baseline.

In *Taylor*, for example, the Court concluded that the *result itself* was unreasonable in the absence of additional explanation. See 487 U.S. at 343-344. The district court there had barred reprosecution of a defendant whose own flight from justice had been partly responsible for the expiration of his Speedy Trial Act clock. See *id.* at 328-330. This Court deemed the defendant's culpability "certainly relevant" to the determination whether to dismiss with prejudice, yet it had not been taken into account by the district court. *Id.* at 340; see *id.* at 338-339 (noting that the district court criticized "the government's lackadaisical behavior" but "gave no indication of the foundation for its conclusion"); *id.* at 340 (noting that the district court failed to consider the

defendant's "culpable conduct and, in particular, his responsibility for the failure to meet the timely trial schedule in the first instance"). The Court therefore concluded that the district court's ultimate decision—and not just the extent of its reasoning—constituted an abuse of discretion. See *id.* at 343-344.

The various fee-award decisions cited by petitioner likewise did not involve a mere failure of explanation, but instead a departure from the governing substantive standard. See Pet. Br. 14 (citing *Northcross* v. *Board of Educ.*, 412 U.S. 427 (1973) (per curiam); *Perdue* v. *Kenny A. ex rel. Winn*, 559 U.S. 542 (2010); and *Hensley* v. *Eckerhart*, 461 U.S. 424 (1983)). In both *Northcross* and *Kenny A.*, the district court had deviated from a statutory presumption in favor of awarding attorney's fees to the prevailing party—in *Northcross* by awarding no fees at all, 412 U.S. at 427-428, and in *Kenny A.* by increasing the market-value "lodestar" amount by 75% without sufficiently rebutting the "strong presumption that the lodestar figure is reasonable," 559 U.S. at 554, 557. And in *Hensley*, the district court had granted a fee award to plaintiffs who prevailed on only some of their claims, while "refus[ing] to eliminate from the award hours spent on unsuccessful claims," by focusing solely on whether the plaintiffs had "obtained significant relief," without "properly consider[ing] the relationship between the extent of [the plaintiffs'] success and the amount of the fee award." 461 U.S. at 428, 438, 440; see *id.* at 434-437. In all three fee-award cases, then, this Court determined that a district court had abused its discretion by departing from the proper statutory framework without providing an adequate justification.

A case like this, in contrast, does not involve a departure from the norm that must be justified—it involves the reduction of a sentence to a level within a range specified by the Sentencing Commission. A district court that reduces a sentence to a point within the revised guidelines range adheres to a default rule, rather than departing from it. Unlike in *Taylor* or the fee-award cases, such a reduction does not suggest that the district court may have considered an impermissible factor. See *Taylor*, 487 U.S. at 343 (noting that the district court "appears to have decided to dismiss with prejudice in this case in order to send a strong message to the Government that unexcused delays will not be tolerated," which misapprehends the Speedy Trial Act's remedial provision). Also unlike in *Taylor* or the other cases, a district court's certification on Form AO-287 can confirm that the court has considered the Section 3553(a) factors that it deems "applicable." 18 U.S.C. 3582(c)(2); see J.A. 106-107.

2. Appellate courts do not need additional explanation to provide meaningful review of within-Guidelines sentence reductions

Petitioner's position largely boils down to the assertion (Br. 8) that abuse-of-discretion review of Section 3582(c)(2) sentence reductions would be "an empty formality" in the absence of his proposed explanation requirement. But meaningful appellate review does not reflexively require a remand whenever a district court does not provide an extensive explanation of its reasoning. This Court has never suggested, for example, that abuse-of-discretion review of a district court's decision under Federal Rule of Evidence 403, see, *e.g.*, *United States* v. *Abel*, 469 U.S. 45, 54-55 (1984), is impossible unless the court articulates all the factors that led it to

determine that the particular evidence was not unduly prejudicial. Rather, the nature of the determination informs the level of detail needed for meaningful review. Cf. *Taylor*, 487 U.S. at 336 ("Whether discretion has been abused depends, of course, on the bounds of that discretion and the principles that guide its exercise."). And the court of appeals here appropriately found a "meaningful basis for appellate review." J.A. 60 (citation omitted), where the district court had (1) granted a Section 3582(c)(2) motion; (2) imposed a sentence within the revised guidelines range; and (3) confirmed that it considered the appropriate Section 3553(a) factors.

a. Petitioner does not dispute that Congress has the power to define the scope of appellate review in the Section 3582(c)(2) context. See *Booker*, 543 U.S. at 260-262. And such review is circumscribed in multiple ways, such that a detailed explanation of the reduced sentence is not a necessary prerequisite to accomplishing the task.

First, a defendant has already received one full round of process, see *Brecht* v. *Abrahamson*, 507 U.S. 619, 633 (1993), and the sentence-reduction procedures themselves are not constitutionally required, see *Dillon*, 560 U.S. at 828. Accordingly, the set of potential constitutional concerns that an appellate court might need to consider is much smaller in the Section 3582(c)(2) context than in the context of an original sentencing. See *ibid.*

Second, although original sentencing decisions are subject to appellate review for substantive reasonableness, see *Gall*, 552 U.S. at 51, discretionary decisions whether to reduce a sentence under Section 3582(c)(2) are not. See *United States* v. *Bowers*, 615 F.3d 715, 720-728 (6th Cir. 2010). The Sentencing Reform Act created a specific provision, 18 U.S.C. 3742, governing appellate

courts' "[r]eview of a sentence." Section 3742 is thus "the exclusive avenue" for an appeal challenging a district court's decision to retain or reduce a sentence under Section 3582(c)(2). *Bowers*, 615 F.3d at 719 (citation omitted); see, *e.g.*, *Hinck* v. *United States*, 550 U.S. 501, 506 (2007) (reiterating "the well-established principle" that "'a precisely drawn, detailed statute pre-empts more general remedies'") (quoting *EC Term of Years Trust* v. *United States*, 550 U.S. 429, 433 (2007)). And the only ground on which Section 3742 permits review of a sentence reduced to a level that comports with the Sentencing Guidelines is if it "was imposed in violation of law." 18 U.S.C. 3742(a)(1).

Such review does not encompass substantive challenges to a district court's exercise of discretion in the context of a sentence reduction. Although this Court has established a broader standard of appellate review for "unreasonableness" in the original sentencing context, see *Booker*, 543 U.S. at 259-261, it has not done so in the Section 3582(c)(2) context, to which *Booker*'s reasoning does not apply, see *Dillon*, 560 U.S. at 828-830. As a result, appellate courts lack jurisdiction to consider challenges to the substantive reasonableness of a sentence-reduction decision.[2]

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[2] Several courts of appeals have exercised jurisdiction over substantive-reasonableness challenges to a district court's discretionary denial of a Section 3582(c)(2) motion. See *United States* v. *Rodriguez*, 855 F.3d 526, 530-532 (3d Cir. 2017); *United States* v. *Jones*, 846 F.3d 366, 370 (D.C. Cir. 2017); *United States* v. *Dunn*, 728 F.3d 1151, 1156-1158 (9th Cir. 2013). But those courts have generally done so by extending this Court's decision in *Booker*, and *Dillon* clarified that neither *Booker*'s constitutional holding nor its remedial holding applies to Section 3582(c)(2). See *Dillon*, 560 U.S. at 828-830.

Third, any review of a particular reduced sentence would be highly deferential, even assuming that such review encompasses substantive reasonableness. A district court that reduces a sentence under Section 3582(c)(2) is using a mechanism that is designed "to give prisoners the benefit of later enacted adjustments to the judgments reflected in the Guidelines." *Dillon*, 560 U.S. at 828. Even more so than in an original sentencing, it would be appropriate for an appellate court to "recognize[] the real-world circumstance that when the judge's discretionary decision accords with the Commission's view of the appropriate application of § 3553(a) in the mine run of cases, it is probable that the sentence is reasonable." *Rita*, 551 U.S. at 350-351; see *Gall*, 552 U.S. at 51 (explaining that appellate courts may apply a presumption of reasonableness to within-Guidelines sentences). The "sentencing statutes envision both the sentencing judge and the Commission as carrying out the same basic §3553(a) objectives, the one, at retail, the other at wholesale," *Rita*, 551 U.S. at 348, and the Commission's ability to place binding constraints on Section 3582(c)(2) reductions, see *Dillon*, 560 U.S. at 824-830, means that any such reduction will inherently accord with the Commission's own determination of an appropriate sentence for a particular type of offense and offender.

b. A detailed explanation of the district court's reasons for a particular sentence reduction is especially unnecessary to enable appellate review where, as here, the district court selects a sentence within the revised guidelines range. When a district court reduces a sentence in accord with the Commission's own authorized reduction, its reasoning will likely be implicit in ways that it might not be in less structured contexts. That is

why, even for original sentences subject to Section 3553(c)'s explanatory requirement, this Court has never required a precise articulation of how the district court considered each of the relevant statutory sentencing factors, particularly when the district court selects a within-Guidelines sentence. See *Rita*, 551 U.S. at 356-358; pp. 21-22, *supra*.

If the record in an individual case suggests that a district court considered an inappropriate factor, or refused to consider an appropriate one, that could constitute an abuse of discretion. See *Cooter & Gell* v. *Hartmarx Corp.*, 496 U.S. 384, 405 (1990) (explaining that "[a] district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law"). But, as in the context of an original sentencing, the possibility of such an impermissible consideration does not justify requiring every court in every case to provide the precise reasons for the particular sentence within the range permitted by the Sentencing Guidelines. An appellate court's starting presumption must be that district courts "know the law and * * * apply it in making their decisions." *Walton* v. *Arizona*, 497 U.S. 639, 653 (1990), overruled on other grounds by *Ring* v. *Arizona*, 536 U.S. 584 (2002). The likelihood that a district court took improper—or even novel—considerations into account is especially remote in the highly constrained context of a Section 3582(c)(2) determination. And Form AO-247, which the district court used here, generally buttresses the presumption of judicial regularity, as district courts must confirm that they "t[ook] into account the policy statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable." J.A. 107.

c. Petitioner contends (Br. i, 26-28) that a more specific explanation should always be required when a reduced sentence is not "proportional"—*i.e.*, when the district court does not reduce a defendant's sentence to a position within the revised guidelines range that corresponds mathematically to the original sentence's position within the original guidelines range. In those circumstances, petitioner contends (Br. 17), a district court must explain why it declined to grant "a full reduction." But nothing in Section 3582(c)(2) or the relevant Sentencing Guidelines suggests any such proportionality principle, or that an appellate court should presume any impropriety from a "non-proportional" reduction.

Section 3582(c)(2) neither distinguishes "proportional" from "non-proportional" sentence reductions nor imposes any special explanatory requirement in the latter circumstance. Some portions of the Sentencing Reform Act differentiate between within-Guidelines and outside-Guidelines sentences for purposes of either explanation, see 18 U.S.C. 3553(c)(1)-(2), or appellate review, see 18 U.S.C. 3742(a)(3) and (b)(3). But neither in Section 3582(c)(2) nor elsewhere does the Act contain any distinction of the sort that petitioner proposes.

Nor did the Sentencing Commission establish a preference for proportional reductions in the relevant policy statement, Sentencing Guidelines § 1B1.10. Rather, the Commission focused on a district court's ability to reduce a sentence to a point within the revised guidelines range, but no lower. See *id.* § 1B1.10(b)(2). "Subject to th[o]se limitations," the Commission explained, "the sentencing court has the discretion to determine whether, and to what extent, to reduce a term of imprisonment under this section." *Id.* § 1B1.10, comment. (n.3).

Petitioner suggests (Br. 16-17) that the drug-guidelines amendment on which his Section 3582(c)(2) motion was premised, Amendment 782, itself establishes proportional sentence reductions as the default. But the Commission's guidance on retroactive sentence reductions is embodied only in the policy statement "applicable" to such reductions—namely, Sentencing Guidelines § 1B1.10, see *Dillon*, 560 U.S. at 821—not in individual substantive amendments. That stands to reason, as it would be difficult for district courts to apply one set of procedures to Section 3582(c)(2) reductions involving one amendment, but a different set of procedures to reductions involving other amendments. See Sentencing Guidelines § 1B1.10(d) (listing 27 amendments that have been deemed retroactive).

In any event, Amendment 782 does not reflect any particular expectation of proportional sentence reductions. Petitioner correctly observes (Br. 16) that the Commission revised the drug-quantity tables after determining "that setting the base offense levels slightly above the mandatory minimum penalties is no longer necessary to achieve its stated purpose." Amend. 782. But that merely explains why the Commission amended the guidelines range in the first place; it does not indicate any preference about where in the amended range a reduced sentence should fall.

Even more attenuated is petitioner's assertion (Br. 17) that the Commission's predictions about the average sentence reduction under Amendment 782 reveal "its expectation that eligible prisoners ordinarily would receive" a "proportional" sentence at the same relative position within the revised guidelines range. Although the Commission's model adopted such an assumption to project release dates, the model does not suggest the

normative rule that petitioner would impose on the courts. See Memorandum from Office of Research & Data & Office of Gen. Counsel, U.S. Sent. Comm'n, to Chair Saris, Comm'rs, & Kenneth Cohen, *Analysis of the Impact of the 2014 Drug Guidelines Amendment If Made Retroactive*, App. (Tbl. 8) (May 27, 2014), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20140527_Drug_Retro_Analysis.pdf. The Commission repeatedly stated that it was simply projecting "the full reduction *possible* in each case," not the reduction *appropriate* in each case. *Id.* at 7 (emphasis added); see also *id.* at 14, 15, 20. And the Commission emphasized that it "was required to make some assumptions" in order to develop a model at all, and that "[t]hese assumptions may not hold in every case." *Id.* at 17.

C. The Court Of Appeals Correctly Affirmed The District Court In This Case

The court of appeals correctly determined that the district court did not abuse its discretion when it reduced petitioner's 135-month sentence to 114 months, rather than the 108 months that petitioner had requested. See J.A. 43, 107.

1. Petitioner's procedural challenge to the district court's sentence reduction is quite narrow. He acknowledges (Br. 5) that the district court deemed him eligible for a reduced sentence and partially granted his motion for a sentence reduction. And he does not contend that the 114-month sentence that the court imposed is itself problematic. For example, he does not dispute that the court correctly calculated the revised guidelines range. See J.A. 42, 108. Nor does he assert that the court necessarily considered some impermissible factor outside

Section 3553(a) in determining the appropriate sentence reduction. Instead, he contends (Br. 26-32) only that the court did not say enough to explain its discretionary reduction to a sentence within—but not at the very bottom of—the revised guidelines range.

The court of appeals, however, properly "presume[d]" that the district court knew and correctly applied the governing legal principles. J.A. 56 (citation omitted); see *Walton*, 497 U.S. at 653 (instructing appellate courts to "presume[]" that district courts "know the law and * * * apply it in making their decisions," unless the record suggests otherwise). Such deference to a lower court's discretionary determination is a "hallmark of abuse-of-discretion review." *Sprint/United Mgmt. Co.* v. *Mendelsohn*, 552 U.S. 379, 384 (2008) (quoting *General Elec. Co.* v. *Joiner*, 522 U.S. 136, 143 (1997)). And "particularly when the applicable standard of review is deferential," an "appellate court should not presume that a district court intended an incorrect legal result when the [district court's] order is equally susceptible of a correct reading." *Id.* at 386.

Petitioner's challenge to the district court's order would flip that presumption. He does not identify anything in the record suggesting that the district court gave weight to an impermissible consideration. Indeed, he acknowledges (Br. 28) that that the court could have based its sentence on legitimate factors, such as his post-sentencing conduct. See Sentencing Guidelines § 1B1.10, comment. (n.1(B)(iii)). He asserts (Br. 28) only that, in his view, "it equally is possible that the district court relied on" factors that he suggests may have been illegitimate. As an example, petitioner hypothesizes (Br. 29) that the court might have applied "a blanket policy of denying full reductions to any defendant

who had any type of reported discipline while in prison." But even assuming it were impermissible for a district court to apply a generalized view about the appropriate sentencing consequences for particular prison infractions, no evidence in the record suggests that the court did so here, or performed anything other than a balancing of the appropriate Section 3553(a) and Sentencing Guidelines § 1B1.10 factors.[3]

The court of appeals thus appropriately rejected petitioner's speculation. See J.A. 57 ("Nothing indicates in this case [that] the district court failed to consider the § 3553(a) factors or otherwise abused its discretion."). As the court of appeals observed, J.A. 57, the district court expressly indicated on Form AO-247 that it had "considered [petitioner's] motion" and had "tak[en] into account" both "the sentencing factors set forth in 18 U.S.C. § 3553(a)" and the relevant "policy statement set forth at USSG §1B1.10," J.A. 106-107. The district court also "correctly indicate[d] the amended guidelines range." J.A. 57. And although the district court did not elaborate on how it weighed the Section 3553(a) factors, the court of appeals determined that, on this record, "it is safe to infer from the [district] court's rejection of the low-end-of-the-range sentence that it carefully considered the materials * * * presented to it by the parties."

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[3] Petitioner incorrectly characterizes (Br. 30) a sentence six months above the bottom of the revised guidelines range as "an effective six-month term of imprisonment" that must be justified as such. See *id.* at 29 (asserting that the revised sentence "effectively imprisons him for an additional six months"). Petitioner received a 135-month sentence that was sufficiently justified, and any subsequent reduction to that sentence is an act of legislative grace—not an independent sentence. See *Dillon*, 560 U.S. at 825, 828.

Ibid. Those materials "included an incident of misconduct while in prison," *ibid.*, which the Probation Office had discussed in its memorandum addressing petitioner's Section 3582(c)(2) motion, J.A. 64-65, and which the parties had mentioned in their joint stipulation to petitioner's eligibility, J.A. 43.

At bottom, the district court necessarily determined that petitioner's crimes—involving a significant quantity of a drug that "destroys individual lives," J.A. 25, and an association with a major drug cartel, J.A. 75, 91—and record merited an absolute term of 114 months of imprisonment. The court of appeals did not need to "speculate about which factors" the district court considered, as petitioner asserts (Br. 26), because the district court made clear, and context showed, that it considered the Section 3553(a) factors, along with the policies in Sentencing Guidelines § 1B1.10 (including the provision for consideration of post-sentencing conduct, *id.* § 1B1.10, comment. (n.1(B)(iii)). Little would have been gained from a remand requiring the district court to add a summary sentence stating, for example, that "114 months is appropriate, considering petitioner's crimes and post-sentencing conduct." That conclusion was already implicit in the sentence reduction that the court granted.

2. Even if the Court were to adopt petitioner's theory (Br. 24) that the requirement to explain a sentence-reduction decision is "no different" from the requirement to explain an original sentencing decision, it should still affirm. Relying on the standard for original-sentencing explanations in *Rita*, *supra*, petitioner proposes that a "district court ruling on a § 3582(c)(2) motion" must "'set forth enough to satisfy the appellate court that [it] has considered the parties' arguments

and has a reasoned basis for exercising [its] own legal decisionmaking authority.'" Pet. Br. 25 (emphasis omitted) (quoting *Rita*, 551 U.S. at 356). As the court of appeals determined, J.A. 55-56, the district court's decision here satisfied that standard.

The district court correctly calculated that the guidelines range, with Amendment 782, was 108 to 135 months. J.A. 108. It then imposed a 114-month sentence in the bottom quartile of that range. J.A. 107. Under *Rita*, when a district court "decides simply to apply the Guidelines to a particular case, doing so will not necessarily require lengthy explanation." 551 U.S. at 356-357. The district judge presumably determined that "the case before him [wa]s typical" and that a sentence toward, but not at, the bottom of the guidelines range was appropriate for petitioner's crimes. *Id.* at 357. And that determination was substantively reasonable, as the court confronted a defendant who, for more than a year, distributed large quantities of methamphetamine for substantial sums of money across the country, and did so in connection with a major drug cartel. See J.A. 71-75.

This case does not implicate *Rita*'s admonition that a district court must typically provide more explanation where "a party contests the Guidelines sentence generally under § 3553(a) * * * or argues for departure." 551 U.S. at 357. No significant legal or factual disputes arose. The parties agreed that the revised guidelines range applied. See J.A. 42. And under the binding Sentencing Commission policy statement, the district court lacked the authority to reduce petitioner's term below 108 months. See Sentencing Guidelines § 1B1.10(b)(2)(A). The parties also agreed that any post-sentencing misconduct did not entirely disqualify

petitioner from a sentence within the revised guidelines range. See J.A. 43.

Petitioner's challenge to his reduced sentence centers on the contention that the district court was required to explain why he did not receive a reduction to the bottom of the amended guidelines range (108 months), when the original sentence was at the bottom of the original range (135 months). But nothing requires a district court to sentence at the bottom of a range, even if it views a particular offender as typical. The Commission's provision of ranges, rather than fixed sentences, inherently allows for some degree of variation in individual sentencings even among judges who agree that a particular range is appropriate for a particular type of offense and offender. And where two ranges are *different* (here, 135-168 months vs. 108-135 months), nothing would require a district court to view a typical case—or a typical offender—as deserving of a sentence at a corresponding point in both ranges. The district court here, for example, made clear at petitioner's original sentence that it viewed his crimes as involving considerable amounts of a destructive drug. J.A. 25. Even absent any post-sentencing misconduct, it was not obligated to conclude that the correct reduced sentence was 108 months rather than 114 months.

In these particular circumstances, the district court "need say no more" under *Rita* than to confirm its application of the Section 3553(a) factors and select a sentence within the correctly calculated guidelines range. 551 U.S. at 357; see *id.* at 345. It did so. J.A. 107. And if that explanation would have satisfied the *Rita* standard in an original sentencing proceeding, it satisfies the extratextual explanatory requirement that petitioner

advocates for sentence reductions under Section 3582(c)(2).

CONCLUSION

The decision of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. 18 U.S.C. 3553 provides:

Imposition of a sentence

(a) FACTORS TO BE CONSIDERED IN IMPOSING A SENTENCE.—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for—

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.[1]

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

(b) APPLICATION OF GUIDELINES IN IMPOSING A SENTENCE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines appli-

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[1] So in original. The period should probably be a semicolon.

cable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission.

(2) CHILD CRIMES AND SEXUAL OFFENSES.—

(A)[2] Sentencing.—In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless—

(i) the court finds that there exists an aggravating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence greater than that described;

(ii) the court finds that there exists a mitigating circumstance of a kind or to a degree, that—

(I) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, taking account of any amendments to such sentencing guidelines or policy statements by Congress;

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[2] So in original. No subparagraph (B) has been enacted.

(II) has not been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(III) should result in a sentence different from that described; or

(iii) the court finds, on motion of the Government, that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense and that this assistance established a mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence lower than that described.

In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission, together with any amendments thereto by act of Congress. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission, together with any amendments to such guidelines or policy statements by act of Congress.

(c) STATEMENT OF REASONS FOR IMPOSING A SENTENCE.—The court, at the time of sentencing, shall

state in open court the reasons for its imposition of the particular sentence, and, if the sentence—

(1) is of the kind, and within the range, described in subsection (a)(4), and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or

(2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in a statement of reasons form issued under section 994(w)(1)(B) of title 28, except to the extent that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32 the court shall state that such statements were so received and that it relied upon the content of such statements.

If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public record of the court's statement of reasons, together with the order of judgment and commitment, to the Probation System and to the Sentencing Commission,,[3] and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

(d) PRESENTENCE PROCEDURE FOR AN ORDER OF NOTICE.—Prior to imposing an order of notice pursuant

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[3] So in original.

to section 3555, the court shall give notice to the defendant and the Government that it is considering imposing such an order. Upon motion of the defendant or the Government, or on its own motion, the court shall—

(1) permit the defendant and the Government to submit affidavits and written memoranda addressing matters relevant to the imposition of such an order;

(2) afford counsel an opportunity in open court to address orally the appropriateness of the imposition of such an order; and

(3) include in its statement of reasons pursuant to subsection (c) specific reasons underlying its determinations regarding the nature of such an order.

Upon motion of the defendant or the Government, or on its own motion, the court may in its discretion employ any additional procedures that it concludes will not unduly complicate or prolong the sentencing process.

(e) LIMITED AUTHORITY TO IMPOSE A SENTENCE BELOW A STATUTORY MINIMUM.—Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.

(f) LIMITATION ON APPLICABILITY OF STATUTORY MINIMUMS IN CERTAIN CASES.—Notwithstanding any other provision of law, in the case of an offense under

section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. 841, 844, 846) or section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960, 963), the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that—

(1) the defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines;

(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;

(3) the offense did not result in death or serious bodily injury to any person;

(4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and

(5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or

that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

2. 18 U.S.C. 3582 provides:

Imposition of a sentence of imprisonment

(a) FACTORS TO BE CONSIDERED IN IMPOSING A TERM OF IMPRISONMENT.—The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation. In determining whether to make a recommendation concerning the type of prison facility appropriate for the defendant, the court shall consider any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2).

(b) EFFECT OF FINALITY OF JUDGMENT.—Notwithstanding the fact that a sentence to imprisonment can subsequently be—

(1) modified pursuant to the provisions of subsection (c);

(2) corrected pursuant to the provisions of rule 35 of the Federal Rules of Criminal Procedure and section 3742; or

(3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742;

a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

(c) MODIFICATION OF AN IMPOSED TERM OF IMPRISONMENT.—The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction; or

(ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission; and

(B) the court may modify an imposed term of imprisonment to the extent otherwise expressly

permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure; and

(2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(*o*), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

(d) INCLUSION OF AN ORDER TO LIMIT CRIMINAL ASSOCIATION OF ORGANIZED CRIME AND DRUG OFFENDERS.—The court, in imposing a sentence to a term of imprisonment upon a defendant convicted of a felony set forth in chapter 95 (racketeering) or 96 (racketeer influenced and corrupt organizations) of this title or in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.), or at any time thereafter upon motion by the Director of the Bureau of Prisons or a United States attorney, may include as a part of the sentence an order that requires that the defendant not associate or communicate with a specified person, other than his attorney, upon a showing of probable cause to believe that association or communication with such person is for the purpose of enabling the defendant to control, manage, direct, finance, or otherwise participate in an illegal enterprise.

3. Section 1B1.10 of the United States Sentencing Guidelines provides:

Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)

(a) AUTHORITY.—

(1) IN GENERAL.—In a case in which a defendant is serving a term of imprisonment, and the guideline range applicable to that defendant has subsequently been lowered as a result of an amendment to the Guidelines Manual listed in subsection (d) below, the court may reduce the defendant's term of imprisonment as provided by 18 U.S.C. § 3582(c)(2). As required by 18 U.S.C. § 3582(c)(2), any such reduction in the defendant's term of imprisonment shall be consistent with this policy statement.

(2) EXCLUSIONS.—A reduction in the defendant's term of imprisonment is not consistent with this policy statement and therefore is not authorized under 18 U.S.C. § 3582(c)(2) if—

(A) none of the amendments listed in subsection (d) is applicable to the defendant; or

(B) an amendment listed in subsection (d) does not have the effect of lowering the defendant's applicable guideline range.

(3) LIMITATION.—Consistent with subsection (b), proceedings under 18 U.S.C. § 3582(c)(2)

and this policy statement do not constitute a full resentencing of the defendant.

(b) DETERMINATION OF REDUCTION IN TERM OF IMPRISONMENT.—

(1) IN GENERAL.—In determining whether, and to what extent, a reduction in the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement is warranted, the court shall determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (d) had been in effect at the time the defendant was sentenced. In making such determination, the court shall substitute only the amendments listed in subsection (d) for the corresponding guideline provisions that were applied when the defendant was sentenced and shall leave all other guideline application decisions unaffected.

(2) LIMITATION AND PROHIBITION ON EXTENT OF REDUCTION.—

(A) LIMITATION.—Except as provided in subdivision (B), the court shall not reduce the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement to a term that is less than the minimum of the amended guideline range determined under subdivision (1) of this subsection.

(B) EXCEPTION FOR SUBSTANTIAL ASSISTANCE.—If the term of imprisonment imposed was less than the term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing pursuant to a government motion to reflect the defendant's substantial assistance to authorities, a reduction comparably less than the amended guideline range determined under subdivision (1) of this subsection may be appropriate.

(C) PROHIBITION.—In no event may the reduced term of imprisonment be less than the term of imprisonment the defendant has already served.

(c) CASES INVOLVING MANDATORY MINIMUM SENTENCES AND SUBSTANTIAL ASSISTANCE.—If the case involves a statutorily required minimum sentence and the court had the authority to impose a sentence below the statutorily required minimum sentence pursuant to a government motion to reflect the defendant's substantial assistance to authorities, then for purposes of this policy statement the amended guideline range shall be determined without regard to the operation of § 5G1.1 (Sentencing on a Single Count of Conviction) and § 5G1.2 (Sentencing on Multiple Counts of Conviction).

(d) COVERED AMENDMENTS.—Amendments covered by this policy statement are listed in Appendix C as follows: 126, 130, 156, 176, 269, 329,

341, 371, 379, 380, 433, 454, 461, 484, 488, 490, 499, 505, 506, 516, 591, 599, 606, 657, 702, 706 as amended by 711, 715, 750 (parts A and C only), and 782 (subject to subsection (e)(1)).

(e) SPECIAL INSTRUCTION.—

(1) The court shall not order a reduced term of imprisonment based on Amendment 782 unless the effective date of the court's order is November 1, 2015, or later.

No. 17-5639

IN THE

Supreme Court of the United States

ADAUCTO CHAVEZ-MEZA,

Petitioner,

v.

UNITED STATES,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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REPLY BRIEF OF PETITIONER

The government's position in this case rests on premises that are not just flawed, but that would gravely undermine the Court's jurisprudence. First, the rule expressed in *United States* v. *Taylor*, 487 U.S. 326 (1988), that when Congress requires courts to consider particular factors in exercising their discretion, those courts must also explain how they weighed the factors, reflects a far broader principle than the government's crabbed reading. As evidenced by the Court's reliance on *Taylor* in the context of original sentencing, this duty of articulation applies whenever Congress directs courts to consider certain factors—not just to situations involving "binary" choices or "departure[s] from the norm." Resp't Br. 28, 30. Moreover, contrary to the government's strawman, Mr. Chavez-Meza has never argued that this rule requires district courts to provide "extensive," "detailed," or "formal" explanations. *Id.* at 11, 13, 14, 24, 28, 30, 31, 33. What is required is simply "enough to satisfy the appellate court that [the judge] has considered the parties' arguments *and* has a reasoned basis for exercising his own legal decisionmaking authority." *Rita* v. *United States*, 551 U.S. 338, 356 (2007) (emphasis added). Not requiring any explanation would allow district courts to exercise unfettered and unreviewable discretion. Second, the interpretive canon "expressio unius est exclusio alterius" is inapplicable given the textual incongruities between the relevant statutes. Application of the doctrine here would also lead to absurd results in other post-sentencing proceedings. Third, a disproportionate sentence reduction demands explanation because it indicates that some new factor or consideration, not taken into account at the original sentencing proceeding, led the district court to deviate from its original

assessment relative to the judgment of the Sentencing Commission. Absent some explanation for the deviation, review would be an empty formality because the appellate court would be left to speculate as to what that factor or consideration was. Finally, a district court's silent or ambiguous order does not give rise to a presumption that it correctly balanced the relevant factors. When the basis of the district court's decision is unclear, as it is here, the case should be remanded.

I. DISTRICT COURTS MUST ARTICULATE REASONS WHEN EXERCISING DISCRETION GRANTED BY CONGRESS.

A. The Duty To Consider Certain Factors Necessarily Entails The Duty Of Articulation.

The government cannot avoid the Court's holding in *Taylor* that where Congress directs a district court to consider certain factors, the court must, "*whatever* its decision, *clearly articulate* their effect in order to permit meaningful appellate review." 487 U.S. at 336 (emphases added). Such review is necessary to ensure that the district court "act[ed] within the limits prescribed by Congress." *Id.* at 337. Only when district courts adhere to the twin duties of consideration and articulation, then, may appellate review for abuse of discretion be considered "meaningful."[1]

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[1] Even had Congress in § 3582(c)(2) not directed district courts to the § 3553(a) factors or U.S.S.G. § 1B1.10, a district court would still be required to articulate some reasoning in order to effectuate meaningful appellate review. See *Taylor*, 487 U.S. at 336 ("Had Congress merely committed the choice of remedy to the discretion of district courts, without specifying factors to be considered, a district court would be expected to consider 'all relevant public and private interest factors,' and to balance

The government contends that *Taylor* does not apply because "[i]mporting Section 3553(c) . . . would nullify Congress's decision to establish an explanatory requirement for original sentencing proceedings, while declining to do so for more streamlined sentence reduction determinations." Resp't Br. 25. But the government misreads Mr. Chavez-Meza's position as he has never argued for any such "importation."[2]

Indeed, "importing" § 3553(c) into § 3582(c)(2) would make no sense. Congress does not just merely require sentencing courts at an original sentencing hearing "to explain on the record the reasons for the sentence imposed," Resp't Br. 18, but it demands that they do so "in open court." § 3553(c). Section 3582(c)(2), in contrast, "does not authorize a sentencing or resentencing proceeding," *Dillon* v. *United States*, 560 U.S. 817, 825 (2010), and the vast majority of § 3582(c)(2) motions are decided without a hearing. It is illogical, then, to think that Congress's decision not to import the heightened procedural requirements found in § 3553(c) meant anything other

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those factors reasonably." (quoting *Piper Aircraft Co.* v. *Reyno*, 454 U.S. 235, 257 (1981)).

[2] The government incorrectly asserts that Mr. Chavez-Meza "identifie[d] a key flaw in his own position" by noting that requiring articulation in a § 3582(c)(2) proceeding is, in effect, akin to requiring an explanation in original sentencing. Resp't Br. 25. Mr. Chavez-Meza's brief (in the very next sentence) goes on to explain that, while the two proceedings are fundamentally different in nature, the finality and gravity of the end result is the same. This "end result," Pet'r Br. 24, is no different than, say, the dismissal of an indictment with or without prejudice at issue in *Taylor*. The key point is simply that where Congress identifies factors that must be considered, district courts must "clearly articulate their effect in order to permit meaningful appellate review." *Taylor*, 487 U.S. at 336.

than Congress understood that § 3553(c) applied only at original sentencing proceedings.

The government's position that all sentence reductions falling anywhere within an amended-guideline range are unreviewable (because they necessarily fall within congressional limits), Resp't Br. 27-28, fundamentally misreads *Taylor*. The limitations at issue in *Taylor* were not limits on the ultimate, substantive, outcome, e.g., dismissal of an indictment with or without prejudice, but a framework of factors created by Congress to guide a district court's discretion. 487 U.S. at 337 ("Only [by clearly articulating its reasoning] can an appellate court ascertain whether a district court has ignored or slighted a factor that Congress has deemed pertinent to the choice of remedy, thereby failing to act within the limits prescribed by Congress."); see Henry J. Friendly, *Indiscretion About Discretion*, 31 Emory L.J. 747, 770 (1982) ("Once it has been deemed appropriate to limit the range of discretion, whether through the announcement of a principle of preference or the specification of factors, it becomes necessary that the trial court articulate the basis for its decision."). In the context of § 3582(c)(2), these "limitations" are both "the factors set forth in section 3553(a) to the extent that they are applicable" and the "applicable policy statements." § 3582(c)(2).

The government's attempts to distinguish *Taylor* on the grounds that this case "does not raise the same concerns as a district court's binary decision," or because it "does not involve a departure from the norm that must be justified," Resp't Br. 28, 30, are equally ineffective. Nothing in *Taylor* suggested that the need for a reviewing court to ensure that a district court did not "ignore[] or slight[] a factor that Congress has deemed pertinent to the choice of remedy," 487 U.S.

at 337, hinged on "binary" or "incremental[]" choices. Resp't Br. 28. This Court's reliance on *Taylor* in the sentencing context reveals the fallacy of the government's position at any rate. See *Rita*, 551 U.S. at 356; *Gall* v. *United States*, 552 U.S. 38, 68 (2007) (Alito, J., dissenting).

Similarly, there was no "norm" in *Taylor* that needed to be "justified" on review. *Taylor* acknowledged that "Congress did not intend any particular type of dismissal to serve as the presumptive remedy for a Speedy Trial Act violation." 487 U.S. at 334. "[T]he decision to dismiss with or without prejudice was left to the guided discretion of the district court, and . . . neither remedy was given priority." *Id.* at 335. Even if the government were correct in this regard, this case—where Mr. Chavez-Meza's reduced sentence represented an increase of over 22% in relation to where his original sentence fell within the guideline range—*does* present "a departure from the norm." See *United States* v. *Burrell*, 622 F.3d 961, 965 (8th Cir. 2010) ("Because [defendant]'s initial and amended sentences are not proportional, we cannot presume that the reasons given for imposing a sentence near the middle of the guidelines range at his initial sentencing apply with equal force to the amended sentence at the top of the amended guidelines range.").

B. The Need For Meaningful Appellate Review Demands Explanation.

The government further misconstrues *Taylor* and other cases as holding that articulation is only required in cases involving "case-specific concerns," or where lower courts "depart[ed] from an established baseline." Resp't Br. 28. But nothing in the Court's precedent supports these arguments.

The Court in *Taylor* reversed because "[t]he District Court failed to consider all the factors relevant to" its discretionary choice. 487 U.S. at 344. Similarly, the Court's decision to reverse in *Perdue* v. *Kenny A. ex rel. Winn*, 559 U.S. 542 (2010), was rooted in the understanding that "[i]t is essential that the judge provide a reasonably specific explanation for *all* aspects of a fee determination, including any award of an enhancement. Unless such an explanation is given, adequate appellate review is not feasible . . . ." *Id.* at 558 (emphasis added). And in *Northcross* v. *Board of Education*, 412 U.S. 427 (1973) (per curiam), the Court remanded because it was impossible to review the propriety of the fee ruling given that the appellate court "did not . . . state reasons for the denial." *Id.* at 427; *accord Hensley* v. *Eckerhart*, 461 U.S. 424, 438 (1983); see also *United States* v. *Marion*, 590 F.3d 475, 478 (7th Cir. 2009) ("[I]t is impossible for us to ensure that the district court did not abuse its discretion if the order shows only that the district court exercised its discretion rather than showing *how* it exercised that discretion. Some minimal explanation is required."). Certainly, none of these cases can be read for the principle that the government asks the Court to adopt, *i.e.*, that a district court's discretionary choice will be upheld so long as the court utters magic words providing that it considered the relevant factors, but does not at all articulate how those factors impacted its choice.

The government ultimately does not dispute that a district court's sentence-reduction decision is reviewed for abuse of discretion and that, to effectuate appellate review, there must be a "meaningful basis" on which such review can turn. Resp't Br. 31. Yet the government posits that such a meaningful basis is found whenever "the district court . . . (1) grant[s] a

Section 3582(c)(2) motion; (2) impose[s] a sentence within the revised guidelines range; and (3) confirm[s] that it considered the appropriate Section 3553(a) factors." *Id.* Adopting the government's position would mean that every district court's unreasoned sentence-reduction decision issued on an AO-247 Form would be completely unreviewable so long as the court imposed a reduced sentence anywhere within the amended-guideline range.

The effect of the government's proposed rule would be to preclude appellate review of the majority of sentence-reduction decisions. U.S. Sentencing Comm'n, 2014 Drug Guidelines Amendment Retroactivity Data Report tbl. 6 (Jan. 2018), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20180201-Drug-Retro-Analysis.pdf (showing that 64% of sentence-reduction motions granted pursuant to Amendment 782 were for within-guideline-range sentences). In the context of this case, this means that had the district court, without explanation, reduced Mr. Chavez-Meza's sentence by only one month (or even if it "granted" Mr. Chavez-Meza's motion but left his sentence the same), the court of appeals would be required to hold that the district court did not abuse its discretion.

The government offers no cases from this Court in support of such a radical reformation of the meaning of "meaningful appellate review." And for good reason—the Court in *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405 (1975), rejected the idea that "a district court has virtually unfettered discretion" to act whenever Congress imbues it with discretionary power. *Id.* at 414. "[W]hen Congress invokes [a court's] conscience to further transcendent legislative purposes, what is required is the principled applica-

tion of standards consistent with those purposes." *Id.* at 417 (internal quotation marks omitted). Absent articulation of *how* a district court considered and weighed the relevant factors, a reviewing court has no basis upon which to make that determination.

C. The Government Misconstrues The Court's Precedent.

The government, following the Tenth Circuit, errs in relying upon a presumption announced in *Walton* v. *Arizona*, 497 U.S. 639 (1990), *overruled by Ring* v. *Arizona*, 536 U.S. 584 (2002), that "[t]rial judges are presumed to know the law and to apply it in making their decisions." *Id.* at 653; see Resp't Br. 38; J.A. 56. The Court made that statement in the context of considering, on federal habeas review, whether a state trial judge in sentencing a person to death pursuant to a potentially vague aggravating factor, should be presumed to know that a state appellate court had construed the factor to fall within constitutional limits. The Court has relied on that presumption only in this unique context. See, *e.g.*, *Lambrix* v. *Singletary*, 520 U.S. 518, 532 n.4 (1997); *Arave* v. *Creech*, 507 U.S. 463, 471 (1993); *Sochor* v. *Florida*, 504 U.S. 527, 538 (1992).

Extending that principle and applying it to every case involving review for abuse of discretion on direct appeal would eradicate the idea of meaningful appellate review. The only case cited by the government for the proposition that judicial silence results in a presumption that the judge did not abuse his or her discretion is *Sprint/United Management Co.* v. *Mendelsohn*, 552 U.S. 379 (2008). But that case is inapposite. In *Mendelsohn*, a unanimous Court held that the court of appeals erred when it determined that the district court applied an incorrect legal standard where the district court's minute order was ambigu-

ous. *Id.* at 386. The Court reversed, but not on the ground that the court of appeals should have presumed that the district court applied the *correct* standard. Instead, the Court vacated and remanded to the district court with instructions to "clarify the basis for its evidentiary ruling." *Id.* at 388.

The government also relies on *Cooter & Gell* v. *Hartmarx Corp.*, 496 U.S. 384 (1990), for the proposition that abuse of discretion occurs where it is evident that the district court considered an improper factor or refused to consider a proper one, i.e., where it based its ruling on an erroneous assessment of the law. Resp't Br. 34. According to the government, it is incumbent on defendants such as Mr. Chavez-Meza to point to something in the record evidencing that the district court made such an error. But the government simply ignores the totality of the Court's holding. The full pertinent sentence reads: "A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law *or* on a clearly erroneous assessment of the evidence." *Cooter & Gell*, 496 U.S. at 405 (emphasis added). Of course, only by knowing *how* a district court assessed the evidence in the first place may a reviewing court determine whether that assessment was erroneous. See *id.* (upholding because the district court had "applied the correct legal standard *and* offered substantial justification for its finding" (internal quotation marks omitted) (emphasis added)).

By quoting only the first half of the *Cooter & Gell* equation and turning a blind eye to the other, the government seeks to radically disrupt what has remained a constant in the Court's jurisprudence. The better rule—and the only one that accords with this Court's precedent—is simply to require a district

court in a § 3582(c)(2) proceeding to provide some explanation for its decision.

Such an explanation need not be lengthy and would not burden district courts. Contrary to the government's apparent understanding, Mr. Chavez-Meza has never argued for a rule requiring district courts to provide "extensive," "detailed," or "formal" explanations, Resp't Br. 11, 13, 14, 24, 28, 30, 31, 33, of their sentence-reduction decisions. As in every case where a district court makes a discretionary ruling, "[t]he appropriateness of brevity or length, conciseness or detail, when to write, what to say, depends upon circumstances." *Rita*, 551 U.S. at 356. What is required of the judge, however, is an explanation sufficient "enough to satisfy the appellate court that he has considered the parties' arguments *and* has a reasoned basis for exercising his own legal decisionmaking authority." *Id.* (emphasis added).

When a judge merely assures the parties that he followed the law in considering certain factors, but provides no explanation as to how those factors affected its decision, it is impossible for any party to assess the decision. In the face of such judicial silence, only in the most Kafkaesque world would it make sense to put the onus on an aggrieved party to identify how, beyond the fact of inarticulation, the judge erred.

D. Sentence-Reduction Decisions Are Fully Reviewable On Appeal.

Relying on *United States* v. *Bowers*, 615 F.3d 715 (6th Cir. 2010), the government wrongly asserts that courts need not explain their § 3582(c)(2) decisions because appellate courts lack jurisdiction to review them for "substantive reasonableness." Resp't Br. 31-32. As an initial matter, the premise of this argument

is faulty as all other courts to have considered that question directly have rejected it.[3] *United States* v. *Rodriguez*, 855 F.3d 526, 529-32 (3d Cir. 2017); *United States* v. *Jones*, 846 F.3d 366, 369-70 (D.C. Cir. 2017); *United States* v. *Washington*, 759 F.3d 1175, 1180-81 (10th Cir. 2014); *United States* v. *Dunn*, 728 F.3d 1151, 1155-58 (9th Cir. 2013).

Even if it were correct, *Bowers* does nothing to impact this case. To the extent the distinction between "procedural" and "substantive" review of a sentence holds in the § 3582(c)(2) context, Mr. Chavez-Meza's claimed error—that the district court abused its discretion by failing to provide any reason for its decision—is procedural. See *Gall*, 552 U.S. at 51. Even after *Bowers*, the Sixth Circuit recognizes such challenges and reverses for the same reason Mr. Chavez-Meza advances. *E.g.*, *United States* v. *Howard*, 644 F.3d 455, 461 (6th Cir. 2011) (remanding § 3582(c)(2) order partially granting reduction because it was impossible "to ensure that the district court did not abuse its discretion because the order shows only that the district court exercised its discretion rather than showing *how* it exercised that discretion" (internal quotation marks and brackets omitted)).

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[3] The issue of an appellate court's jurisdiction over a district court's § 3582(c)(2) decision was not pressed or passed on below, or raised in response to the petition for certiorari. Only in exceptional circumstances will this Court entertain such questions. *California* v. *Taylor*, 353 U.S. 553, 556 n.2 (1957); *Duignan* v. *United States*, 274 U.S. 195, 200 (1927). Tellingly, the government does not assert the existence of any such exceptional circumstance.

II. THE GOVERNMENT'S *EXPRESSIO UNIUS* ARGUMENT IS INAPPLICABLE AND WOULD LEAD TO ABSURD RESULTS.

Relying on the *expressio unius* canon of statutory construction, the government reasons that Congress's express decision to include heightened explanatory requirements in § 3553(c) necessarily implies that Congress intended that district courts need not provide explanations in ruling on § 3582(c)(2) motions. Resp't Br. 18, 25. But the government fails to heed the warning that the canon "must be applied with great caution, since its application depends so much on context." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012). The Court has "held repeatedly, the canon . . . does not apply to every statutory listing or grouping; it has force only when the items expressed are members of an associated group or series, justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence." *Barnhart* v. *Peabody Coal Co.*, 537 U.S. 149, 168 (2003) (internal quotation marks omitted); see also *Chevron U.S.A. Inc.* v. *Echazabal*, 536 U.S. 73, 81 (2002). Even then, the doctrine "is only a guide, whose fallibility can be shown by contrary indications that adopting a particular rule or statute was probably not meant to signal any exclusion of its common relatives." *United States* v. *Vonn*, 535 U.S. 55, 65 (2002).

The government's *expressio unius* argument runs afoul of its own description of the relevant statutes elsewhere in its brief. In its description of the "limited" nature of § 3582(c)(2) proceedings, for example, it points out the substantial differences between original sentencing proceedings under § 3553 and modification proceedings under § 3582(c)(2). Resp't Br. 15. As addressed above, § 3553(c)'s explanatory require-

ment does not simply require courts to explain their reasons. Among other things, it requires them to do so "in open court." It would make no sense to "import" this provision into § 3582(c)(2) because sentence-reduction proceedings are almost always resolved without a hearing. Given this incongruity, Congress's decision not to incorporate or refer to § 3553(c) in § 3582(c)(2) does not give rise to an inference that Congress meant to eliminate any explanatory requirement for sentence-reduction decisions.

Aside from these textual incongruities, the government's proposed "*expressio unius* implication," Resp't Br. 25, would create severe interpretive problems for other post-sentencing provisions in the Sentencing Reform Act. If, as the government contends, the lack of "incorporation" of § 3553(c) in § 3582(c)(2) means that Congress did not intend for district courts to articulate their reasoning, this same logic would apply to § 3583—the provision pertaining to post-sentencing supervised release decisions. Like § 3582(c)(2), § 3583(e) directs district courts to consider certain § 3553(a) factors when deciding whether to terminate, extend, modify, or revoke a term of supervised release. Neither § 3582(c)(2) nor § 3583(e) contains a cross-reference to § 3553(c) or an express explanatory requirement.[4] Under the government's theory, a district court would have unfettered discretion to modify, revoke, or terminate a defendant's term of supervised release. The decision would remain unreviewable so long as the judge provided a "certification," Resp't Br. 30, that he considered the relevant factors.

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[4] While § 3583(e) refers to the Federal Rules of Criminal Procedure, *i.e.*, Fed. R. Crim. P. 32.1, that rule does not contain any express explanatory requirement or reference to § 3553(c).

That would create myriad problems. For example, a court, without giving *any* reasons, could revoke a defendant's supervised release and remand the defendant to prison. Similarly, a district court could avoid imposing any special conditions of supervised release at original sentencing and, then, without explanation, impose onerous special conditions post-sentencing under § 3583(e)(2). Finally, if a district court were to grant a violent offender an early termination of his or her supervised release, the government would rightfully expect the court to explain its decision. But under the government's theory, the district court's decision would be unreviewable.

These examples only serve to show that the Court does not apply the *expressio unius* canon to "infer congressional intent to override . . . background rule[s]" embedded within American jurisprudence. *Marx* v. *Gen. Rev. Corp.*, 568 U.S. 371, 382 (2013). To the contrary, the Court recognizes "that Congress legislates against the backdrop of certain unexpressed presumptions." *Bond* v. *United States*, 134 S. Ct. 2077, 2088 (2014) (internal quotation marks omitted). Indeed, "[t]he notion that some things 'go without saying' applies to legislation as it does to everyday life." *Id.*; see *Burns* v. *United States*, 501 U.S. 129, 136 (1991). As the above examples illustrate, it would be absurd to suggest that Congress intended, by negative implication, to relieve district courts of their basic duty to provide meaningful explanations of their decisions in post-sentencing proceedings.

In this regard, Mr. Chavez-Meza agrees with the government that "Congress was . . . relying on default norms of professional judicial judgment . . . [and on] background principles of judicial discretion" when enacting § 3582(c)(2) and directing courts to consider certain factors. Resp't Br. 23. Congress undoubtedly

was aware at the time of the bedrock principle that when Congress imbues courts with discretionary power, "such discretionary choices are not left to a court's 'inclination, but to its judgment; and its judgment is to be guided by sound legal principles.'" *Albemarle Paper Co.*, 422 U.S. at 416 (quoting *United States* v. *Burr*, 25 F. Cas. 30 (C.C. Va 1807) (No. 14692D) (Marshall, C.J.)). Given this jurisprudential backdrop, Congress, after directing district courts in sentence-reduction proceedings to consider specific factors, would have been exceedingly explicit had it truly intended to give them unfettered and unreviewable discretion.

III. DISPROPORTIONATE SENTENCE REDUCTIONS WILL ALWAYS DEMAND SOME EXPLANATION.

The government's assertion that a district court has no obligation to articulate any explanation whenever the reduced sentence falls at any point within the amended guideline range, Resp't Br. 31, is wrong. According to the government, the district court's reasoning in such a circumstance "will likely be implicit" because it necessarily accords with the Sentencing Commission's view of an appropriate sentence. *Id.* at 33. A district court, however, must always "make an individualized assessment based on the facts presented." *Gall*, 552 U.S. at 50. And district courts must "adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing." *Id.* Indeed, the "abuse-of-discretion standard directs appellate courts to evaluate what motivated the district judge's individualized sentencing decision." *Rita*, 551 U.S. at 364 (Stevens, J., concurring). There is no basis for concluding that this principle does not apply in the sentence-reduction context where the standard of review is the

same. See *Freeman* v. *United States*, 564 U.S. 522, 532 (2011) (plurality opinion) (citing *Gall*).

In the context of an original sentencing, the Commission's expertise, resources, and analysis make it "fair to assume that the Guidelines, insofar as practicable, reflect a rough approximation of sentences that might achieve § 3553(a)'s objectives." *Rita*, 551 U.S. at 350. Thus, when a district court, exercising its discretion, chooses to sentence a defendant at a point within a range established by the Guidelines, appellate courts are allowed to presume that the sentence is substantively reasonable. This is because the sentence "reflects both the Commission's and the sentencing court's judgment as to what is an appropriate sentence for a given offender." *Id.* at 351. In effect, the Commission and the sentencing judge are performing the same analytical task—the former at wholesale and the latter at retail. *Id.* at 348.

The Commission will occasionally retroactively amend a guideline after concluding that the wholesale range it originally had settled on should be reduced. At this point, the original retail point is discordant with the new wholesale range. Congress foresaw this possibility and enacted § 3582(c)(2), which allows district courts to reduce the original retail point so the sentence is again in line with the Commission's determination. *Dillon*, 560 U.S. at 828 (discussing how § 3582(c)(2) is "intended to give prisoners the benefit of later enacted adjustments to the judgments reflected in the Guidelines").

The district court's duty to explain is understandably lessened when the reduced sentence is at the same point in the amended-guideline range relative to where the initial sentence fell within the original guideline range. Only in such a circumstance—and absent any noteworthy new information presented

since the original sentencing—might an appellate court reasonably conclude that the district court's assessment of the § 3553(a) factors in relation to the Commission's assessment of those same factors had not changed. *Burrell*, 622 F.3d at 965; cf. *United States* v. *Watkins*, 625 F.3d 277, 281 (6th Cir. 2010) (affirming denial of § 3582(c)(2) motion where defendant "did not present any new evidence of post-offense rehabilitation or other relevant factors not addressed in previous motions"); U.S.S.G. § 1B1.10(b)(2)(B) (allowing for proportional reductions in situations where defendant was initially sentenced below guideline range in cases of substantial assistance).

However, in cases such as this one—where the reduced retail point is disproportionate to where it originally fell within the wholesale range—any presumption of reasonableness does not hold. Indeed, employing its own logic, the government would have no recourse in a case where a district court: (1) initially sentences a defendant to the top of (or even above) the applicable guideline range; (2) reduces the sentence to the bottom of an amended-guideline range; but (3) does not provide any explanation as to why it made such a dramatic reduction.[5] The district court necessarily must have been swayed by a particular factor, or combination of factors, such that it thought it appropriate to deviate from its original assessment. While a district court's expressed reasoning in reaching that decision may or may not survive abuse-of-discretion review, such a review simply cannot be had unless the district court articulates how it considered the relevant factors.

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[5] In the context of this case, such a reduction would constitute five years, *i.e.*, 168 months to 108 months.

IV. THE COURT OF APPEALS SHOULD HAVE REMANDED.

The government's assertion that, in the context of an original sentencing, a district court need only "confirm its application of the Section 3553(a) factors and select a sentence within the correctly calculated guidelines range," Resp't Br. 42, is equally incorrect. Citing to *Taylor*, the Court in *Rita* held that a district court at sentencing must "set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for making his own legal decisionmaking authority." 551 U.S. at 356 (citing *Taylor*, 487 U.S. at 336-37). The Court affirmed in *Gall* that, whatever the sentence, the judge "must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing." 552 U.S. at 50. While "context and the record" developed in open court at a full sentencing hearing may serve to flesh out a district court's Spartan reasoning, *Rita*, 551 U.S. at 358-59, this does not mean that reviewing courts rubber stamp within-guideline sentences when such context and record are lacking. See, *e.g.*, *United States* v. *Washington*, 739 F.3d 1080 (7th Cir. 2014); *United States* v. *Thomas*, 498 F.3d 336, 340-41 (6th Cir. 2007).

The court of appeals reasoned in this case that it could "infer" that the district court had "carefully considered" the record *because* the reduced sentence was disproportionate to where the original sentence fell within the guideline range. J.A. 57. This rationale does not hold because it could be used to support any disproportionate sentence reduction for any reason—proper or improper. The better understanding is that only when a reduced sentence is proportional to where the original sentence fell within the guideline

range (and where nothing new and noteworthy has happened) might it be said that "context and the record" could give meaning to a district court's silent § 3582(c)(2) decision.

More importantly, even assuming that a disproportionate reduction gives rise to an inference that the district court "carefully consider[ed]" the record says nothing about how it actually applied the § 3553(a) factors, or their effect on the judge's decision. For that, at its core, is what is being reviewed for abuse of discretion on appeal. See *Taylor*, 487 U.S. at 336. To this extent, the government's proposed explanation on remand, Resp't Br. 40, is equally inadequate.

The court of appeals offered that Mr. Chavez-Meza's "incident of misconduct while in prison," J.A. 57, might have had something to do with the district court's decision. Having found something in the record that might explain the disproportionate reduction, the government, relying on its misinterpretation of *Walton* and *Mendelsohn*, would have this Court say it is fair to presume the district court correctly weighed this factor against all others. See Resp't Br. 38. But just as the Court held in *Mendelsohn*, "the Court of Appeals should not have engaged in that inquiry." 552 U.S. at 383. Rather than make any presumption about the correctness, or incorrectness, of the district court's balancing of the relevant factors, "the Court of Appeals should have remanded the case to the District Court for clarification." *Id.* at 384; see also *id.* at 387 ("Rather than assess the relevance of the evidence itself and conduct its own balancing . . ., the Court of Appeals should have allowed the District Court to make these determinations in the first instance, explicitly and on the record.").

CONCLUSION

The judgment of the court of appeals should be vacated and the case remanded to the district court with instructions to articulate its reasons for reducing Petitioner Adaucto Chavez-Meza's sentence to 114 months.

Respectfully submitted,

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No. 17-5639

IN THE

Supreme Court of the United States

ADAUCTO CHAVEZ-MEZA,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Tenth Circuit

BRIEF OF THE CENTER ON THE ADMINISTRATION OF CRIMINAL LAW AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICUS CURIAE*[1]

The Center on the Administration of Criminal Law (the "Center"), based at New York University School of Law, is dedicated to defining and promoting good government practices in the criminal justice system through academic research, litigation, and public policy advocacy.[2] The Center regularly participates as *amicus curiae* in cases raising substantial legal issues regarding interpretation of the Constitution, statutes, regulations, or policies. The Center supports challenges to practices that raise fundamental questions of defendants' rights or that the Center believes constitute a misuse of government resources in view of law-enforcement priorities. The Center also defends criminal justice practices where discretionary decisions align with applicable law and standard practices and are consistent with law-enforcement priorities.

The Center has a substantial interest in this case because sentencing and sentence-reduction decisions play an important role in the administration of criminal law. Requiring district courts to provide reasoned

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[1] Pursuant to Supreme Court Rule 37.6, *amicus* affirms that no counsel for a party authored the brief in whole or in part, that no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, and that no person other than the *amicus* or their counsel made such a monetary contribution. Counsel for all parties consented to the filing of this brief.

[2] No part of this brief purports to represent the views of New York University School of Law, or New York University, if any.

explanations for disproportional sentence reductions would improve the functioning of the criminal justice system and promote public trust in the sentencing process.

INTRODUCTION AND SUMMARY OF ARGUMENT

District courts should provide a reasoned explanation for giving a defendant a particular sentence. In the context of original sentencing proceedings, this Court has recognized that providing an explanation for a chosen sentence is "sound judicial practice," *Rita v. United States*, 551 U.S. 338, 356 (2007), because it promotes "the perception of fair sentencing" and enables "meaningful appellate review." *Gall*, 552 U.S. 38, 50 (2007). The Court's reasoning applies equally to the sentence-reduction proceeding in this case.

Petitioner qualified for a sentence reduction based on Amendment 782 to the U.S. Sentencing Guidelines. This amendment (also known as "drugs minus two") reflects the U.S. Sentencing Commission's unanimous view that the Guidelines under which Petitioner was sentenced were too harsh on drug offenders. Petitioner, who was originally sentenced to the low end of the original Guideline range for his offense at 135 months, asked for a proportional sentence reduction to 108 months pursuant to Amendment 782's revised range. Joint Appendix (J.A.) at 43.

The district court, however, reduced Petitioner's sentence only to 114 months, at the middle of the amended Guidelines range, and provided no explanation for increasing the sentence above the original low

end of the Guidelines determination. J.A. at 46. The Tenth Circuit affirmed. J.A. at 50.

That was error. The district court's failure to explain its disproportional sentence reduction was an abuse of discretion. The Tenth Circuit's decision affirming this practice frustrates the Commission's objectives in adopting Amendment 782, and it also undermines the fair and efficient operation of our criminal justice system.

I. When the U.S. Sentencing Commission first issued the Sentencing Guidelines, it intentionally chose baseline offense levels for drug trafficking offenses that would ensure that the applicable Guideline range exceeded the mandatory minimum sentences set by statute. By 2014, the Commission determined that this decision had resulted in excessive prison sentences for drug offenders, which had substantially contributed to prison overcrowding. To address this problem, the Commission unanimously adopted Amendment 782, which reduced the base offense levels for drug trafficking offenses to ensure that the mandatory minimum fell within the Guideline range. This amendment reflected the broad bipartisan agreement that defendants like Petitioner received sentences longer than necessary to serve Congress's objectives in punishing drug offenders. The Commission also unanimously agreed to apply the Amendment retroactively in an effort to reduce the sentences of prisoners currently serving these excessive sentences.

Given the broad support for Amendment 782, district courts should give explanations when their

refusals to grant proportional sentence reductions undercut the Commission's policy objectives.

II. Reasoned sentencing decisions—even in the context of sentence-reduction proceedings—serve important functions in our criminal justice system. They enable meaningful appellate review, provide important feedback to the Sentencing Commission, and promote public trust in the sentencing process.

A. Reasoned explanations are necessary to permit meaningful appellate review of the district court's sentence-reduction decision. In a sentence-reduction proceeding, as in original sentencing, a district court must consider the sentencing factors in § 3553(a). Appellate courts cannot determine whether the district court considered the mandatory factors and exercised its discretion reasonably if there is no record of whether or how the district court considered the factors and exercised its discretion. The absence of reasoned explanations in these proceedings weakens the criminal justice system by precluding meaningful appellate review.

B. Reasoned explanations of sentence-reduction decisions also provide valuable feedback to the Sentencing Commission that can be used in further improvements to the Sentencing Guidelines. Providing information to the Commission is particularly important in the context of sentence-reduction proceedings so that amended Guidelines can continue to be adjusted as appropriate.

C. Reasoned explanations of a sentence-reduction decisions promote the perception of fairness and increase public trust in the criminal justice system. By articulating valid reasons for a disproportional sentence reduction, district courts provide transparency and guard against actual and perceived bias. Even if they disagree with the outcome, criminal defendants are more likely to accept a disproportional sentence reduction if accompanied by a reasoned explanation.

ARGUMENT

I. Amendment 782 Reflects the Commission's Unanimous View that the Guidelines Should Provide Shorter Sentences for Drug Offenses.

Petitioner sought to have his sentence reduced based on Amendment 782, which the U.S. Sentencing Commission unanimously passed and made retroactive in 2014. The history of the Sentencing Guidelines' treatment of drug offenses and the passage of Amendment 782 demonstrate the broad bipartisan agreement that defendants like Petitioner received sentences longer than necessary to serve Congress's objectives in punishing drug offenders.

When the U.S. Sentencing Commission issued the first Sentencing Guidelines in 1987, it adopted a Drug Quantity Table that established baseline offense levels based on the quantity and type of drug involved in

the drug trafficking offense.[3] The Commission intentionally chose baseline offense levels that would ensure that the applicable Guideline range exceeded the mandatory minimum sentences set by statute.[4] The Commission set the baseline offense levels in this way "to permit some downward adjustments for defendants who plead guilty or otherwise cooperate with authorities."[5]

By 1994, the Commission's justification for this approach ceased to exist. In that year, Congress created a "safety valve" for mandatory minimum sentences, which permitted sentences below the statutory minimum for non-violent offenders who cooperate with the government. 18 U.S.C. § 3553(f). Given this statutory change, the Commission no longer needed to set base offense levels to ensure that Guideline ranges were above the mandatory minimums because the statutory safety valve could be used to encourage cooperation.

In 2014, the Commission proposed a change to the Sentencing Guidelines to address the discrepancy between the base offense level and the corresponding statutory mandatory minimum for particular drug quantities. This proposal, later known as Amendment 782, would reduce the base offense level for drug offenses by two points, which would ensure that the

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[3] *See, e.g.*, Patti B. Saris, *A Generational Shift for Federal Drug Sentences*, 52 Am. Crim. L. Rev. 1, 6 (2015).

[4] *Id.*

[5] *Id.*

Guidelines range included the statutory mandatory minimum. U.S.S.G. app. C, amend. 782.

As the Commission recognized, Amendment 782 was necessary because, over the prior three decades, the Commission had repeatedly amended the Guidelines in ways that further exacerbated the effect of having base offense levels set above the mandatory minimum levels. Although the original Sentencing Guidelines included only one enhancement, by 2014, the Guidelines contained 14 different enhancements, increasing exponentially the extent to which a base offense level could exceed the amount set by the Drug Quantity Table.[6]

In April 2014, the Commission voted unanimously to adopt Amendment 782. U.S.S.G. app. C, amend. 782. The Commission then considered whether the Amendment should apply retroactively to the thousands of federal prisoners already serving lengthy sentences for drug trafficking offenses. In July 2014, the Commission voted unanimously to apply Amendment 782 retroactively. U.S.S.G. app. C, amend. 788, supp. at 86.

The Commission concluded that these changes were necessary to fulfil its statutory duty to "minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons." 28 U.S.C. § 994(g). By 2014, the federal prison population had

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[6] U.S. Sentencing Comm'n, *Sensible Sentencing Reform: The 2014 Reduction of Drug Sentences*, at 2, https://goo.gl/4jCk2V.

grown to around 200,000 prisoners—more than triple the amount in 1989.[7] As a result, by 2014, federal prisons were 32% over capacity, and high-security federal prisons were 52% over capacity.[8] Drug offenders contributed significantly to this overcrowding because *more than half* of all federal prisoners were serving time for drug offenses.[9]

The Commission concluded that these changes to the Sentencing Guidelines would significantly reduce prison overcrowding. The Commission found that prospective application of Amendment 782 would "reduce the federal prison population by around 6,500 after five years and far more over time."[10] And retroactive application of Amendment 782 would "allow more than 40,000 prisoners to be eligible for reductions in their sentences and could save close to 80,000 prison bed years over time."[11]

The Commission also concluded that reducing sentences for drug offenses would not threaten public safety. In making this determination, the Commission relied on its experience in reducing drug sentences for crack cocaine trafficking.[12] In 2007, the

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[7] Saris, *supra* note 3, at 9.

[8] U.S. Sentencing Comm'n, *Sensible Sentencing Reform: The 2014 Reduction of Drug Sentences*, *supra* note 6, at 1.

[9] Saris, *supra* note 3, at 7.

[10] U.S. Sentencing Comm'n, *Sensible Sentencing Reform: The 2014 Reduction of Drug Sentences*, *supra* note 6, at 1.

[11] *Id.*

[12] Saris, *supra* note 3, at 13-14.

Commission adopted a two-level reduction for defendants convicted of trafficking crack cocaine. The Commission reviewed the data on this reduction and found that "reducing sentences for crack offenders did not make those offenders more likely to commit new crimes or less likely to cooperate with law enforcement."[13]

In voting in favor of the proposed amendment, Commissioner Judge William Pryor, Jr. remarked that the amendment "modestly" reduces the starting range for calculating drug trafficking sentences and "should assist the federal judiciary in fulfilling its role of sentencing drug offenders in a fair and rational manner" and "ensure that drug offenders receive sentences that are sufficient, but not greater than necessary, to comply with the purposes of sentencing."[14] Commissioner Judge Ketanji Brown Jackson similarly commented that lowering the base level is an important step to "recalibrating" the drug Guidelines to enable courts to assign "meaningful penalties that account for the entirety of a defendant's culpability and conduct."[15]

The Commission's proposals received overwhelming public support. The Commission received more than 80,000 comments on Amendment 782, the vast

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[13] *Id.* at 14.

[14] U.S. Sentencing Comm'n, Public Meeting Minutes (April 10, 2014), at 18, *available at* https://goo.gl/ohdtkp.

[15] *Id.* at 16.

majority of which favored the proposed changes.[16] These comments demonstrated that the broad support for Amendment 782 extended across political parties and included prosecutors, public defenders, and judges.[17]

The Department of Justice was a leading supporter of Amendment 782. It submitted comments explaining that the amendment was "consistent with the Department's initiative and goals of controlling the prison population and ensuring just and proportional sentences for all offenders."[18] As the government explained, "[b]y reserving the most severe penalties for serious, violent drug traffickers, we can better promote public safety, deterrence, and rehabilitation while saving billions of dollars and strengthening communities."[19]

Then-Attorney General Eric Holder testified before the Commission in support of Amendment 782. He explained that, by reducing the costs of operating

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[16] U.S. Sentencing Comm'n, *Sensible Sentencing Reform: The 2014 Reduction of Drug Sentences*, *supra* note 6, at 1.

[17] *See, e.g.*, Working Group, Public Comment on Retroactivity of "All Drugs Minus 2" Amendment (June 26, 2014), https://goo.gl/5dyjG2 (submitting letter in support of Amendment 782 and its retroactive application on behalf of diverse working group of judges, police, sheriffs, probation officers, correctional officials, community and business leaders, sentencing reform advocates, and distinguished scholars).

[18] Dep't of Justice, Office of Policy and Legislation, Comment Letter on 2014 Proposed Amendment, at 17 (Mar. 6, 2014), https://goo.gl/15sSf8.

[19] *Id.*

federal prisons, Amendment 782 would allow the Department of Justice to hire more prosecutors and agents, and that it would also make possible greater investment in "good prevention programs, good rehabilitation programs while people are incarcerated, and then good re-entry programs to transition people from prison back into their communities."[20] In short, Amendment 782 would "send a strong message about the fairness of our criminal justice system."[21]

The federal judiciary also supported Amendment 782 and its retroactive application. The Judicial Conference submitted a letter supporting the proposed amendment, calling it a "significant improvement over current law" because it would modify the Drug Quantity Tables to ensure that mandatory minimum sentences would fall within the Guideline range.[22] Many federal judges submitted letters supporting retroactive application of Amendment 782, because "justice demands it and because the date on which a person was sentenced should not dictate the appropriateness of their punishment."[23]

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[20] Att'y Gen. Eric Holder, Transcript of Public Hearing before the U.S. Sentencing Comm'n on Proposed Amendments to the Federal Sentencing Guidelines, at 23-24 (Mar. 13, 2014), https://goo.gl/PEhvrq.

[21] *Id.* at 13.

[22] Committee on Criminal Law of the Judicial Conference of the United States, Comment Letter on 2014 Proposed Amendment, at 4 (Mar. 11, 2014), https://goo.gl/iEBknv.

[23] Judge Robert W. Pratt (on behalf of 20 district judges in the Eighth Circuit), Comment Letter on 2014 Proposed Amendment,

Amendment 782 also had widespread and bipartisan support from Congress. Several senators submitted comments to the Commission supporting the Amendment, stating that it was "overdue," and necessary to "restore appropriate judicial discretion in sentencing, address our unsustainable prison population growth, and create greater opportunity for investing in public safety."[24] Other senators proposed legislation that would similarly provide increased judicial discretion in sentencing, in order to make drug sentences fairer and more cost-efficient.[25]

Finally, Amendment 782 could not go into effect until after Congress had an opportunity to decide whether to veto the change.[26] Indeed, Congress did not even hold a hearing to consider the possibility of

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at 1 (July 7, 2014), https://goo.gl/qBS65d; *see also* Judge Lynn Adelman (on behalf of 11 district judges in the Seventh Circuit), Comment Letter on 2014 Proposed Amendment, at 1 (July 7, 2014), https://goo.gl/d18J8L ("Retroactivity is required as a matter of fundamental fairness.").

[24] Richard J. Durbin, Patrick Leahy & Rand Paul, Comment Letter on 2014 Proposed Amendment, at 2 (Mar. 25, 2014), https://goo.gl/qqtVV5.

[25] S. 1410, 113th Cong. (2013) (enacted).

[26] The Sentencing Commission must submit Amendments to Congress before May 1. Unless otherwise specified, or unless Congress legislates to the contrary, amendments submitted for review shall take effect on the first day of November of the year in which submitted. 28 U.S.C. § 994(p). *See also* U.S. Sentencing Comm'n, Rules of Practice and Procedure (as amended August 2016), https://goo.gl/aH6Bpz.

doing so.[27] With "political buy-in . . . coming from both sides,"[28] it was clear that the Amendment's goal of reducing sentences for drug trafficking offenses had broad Congressional and public support.

Given this bipartisan and public support for sentencing reform, and given the general shift toward less punitive sentences for nonviolent drug offenders, it is particularly important that district courts explain their reasoning when issuing sentence-reduction decisions that conflict with these policy goals.

A disproportionate sentence reduction presents such a conflict because the Commission and supporters of Amendment 782 fully expected courts to reduce defendants' sentences by two levels unless there was a public safety concern or change in the consideration of the § 3553(a) factors. When a court denies the two-level reduction as anticipated by the Amendment, it should explain the reasons for doing so.

II. Unexplained Sentencing Decisions Undermine The Fair And Efficient Administration Of Federal Criminal Law.

Petitioner was eligible for a sentence reduction under Amendment 782. Because his original sentence

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[27] William H. Pryor, Jr., *Why We Were Right to Reduce Sentencing Guidelines for Federal Drug Offenders*, National Review (Nov. 4, 2015).

[28] Vikrant Reddy, Transcript of Public Hearing before the U.S. Sentencing Comm'n on Proposed Amendments to the Federal Sentencing Guidelines, at 152 (Mar. 13, 2014), https://goo.gl/WvznCV.

was set at the low end of the Sentencing Guidelines range, a proportional reduction under the Amendment would have reduced his sentence from 135 months to 108 months. Although Petitioner's motion for a reduced sentence was granted, the district court reduced the sentence only to 114 months. J.A. at 46. The court gave no reason denying him the additional six-month reduction he requested and reasonably expected to receive under Amendment 782. *Id.*

This sort of unexplained sentencing decision harms our criminal justice system. It frustrates meaningful appellate review, because without an explanation for the chosen sentence, an appellate court has no means of determining whether and to what extent the district court considered the mandatory sentencing factors, or if it abused its discretion in doing so. It also interferes with the Commission's efforts to refine the Guidelines, which Congress has consistently established as a necessary component of the Sentencing Commission's duty. And it undermines the public trust in the system by making the system seem unfair.

Consistent with the majority of circuits to decide the issue, this Court should hold that the district court abused its discretion by not providing any explanation to justify a disproportional sentence reduction. *See* Petr. Br. at 15 (collecting cases). That rule is not only consistent with this Court's prior decisions, *see id.* at 13-14, but it also helps to ensure that federal criminal law is applied fairly and justly.

A. Reasoned Decisions Enable Meaningful Appellate Review.

A reasoned explanation from the district court in sentence-reduction proceedings is necessary for a court of appeals to conduct meaningful appellate review of the district court's decision. The availability of meaningful appellate review is required by this Court's precedents and promotes fairness and public trust in our judicial system.

District courts have discretion to choose an appropriate sentence for a defendant—both in the original sentencing proceeding and also in any subsequent resentencing or sentence-reduction proceeding. *See, e.g.*, *Gall*, 552 U.S. at 51. That the sentencing decision is discretionary does not suggest a district court may choose a sentence without any constraints. As this Court explained, "[d]iscretion is not whim, and limiting discretion according to legal standards helps promote the basic principle of justice that like cases should be decided alike." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 139 (2005) (citing Henry J. Friendly, *Indiscretion About Discretion*, 31 Emory L.J. 747, 758 (1982)); *see also id.* ("We have it on good authority that 'a motion to [a court's] discretion is a motion, not to its inclination, but to its judgment; and its judgment is to be guided by sound legal principles.'" (quoting *United States v. Burr*, 25 F. Cas. 30, 35 (No. 14,692d) (CC Va. 1807) (Marshall, C. J.))).

This Court has consistently held that where a district court is required to consider particular factors in making a decision, its failure to explain its decision by

reference to those factors suggests an abuse of discretion. *See United States v. Taylor*, 487 U.S. 326, 336-37 (1988); *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 558 (2010). As the Court recognized in *Taylor*, and again in *Perdue*, a congressional mandate that a decision should be governed by consideration of particular factors can only be effectuated if appellate courts are able to determine "whether a district court has ignored or slighted a factor that Congress has deemed pertinent." *Taylor*, 487 U.S. at 337; *see also Perdue*, 559 U.S. at 558.

These principles require district courts to explain their reasoning for sentence-reduction decisions. When courts provide no explanation, appellate courts have no way to assess if the district court abused its discretion. *See, e.g., United States v. Marion*, 590 F.3d 475, 477-78 (7th Cir. 2009) ("[I]t is impossible for us to ensure that the district court did not abuse its discretion if the [sentence-reduction] order shows only that the district court exercised its discretion rather than showing *how* it exercised that discretion."). As the Second Circuit explained, "some statement of reasons is fully applicable in the context of a motion for a sentence reduction," because the appellate court "will not be able to determine whether the district court's exercise of discretion was reasonable without an indication of the reason the discretion was exercised as it was." *United States v. Christie*, 736 F.3d 191, 196 (2d Cir. 2013)

A reasoned decision is particularly necessary when, as here, the district court provides a sentence

reduction that is disproportionate to where the original sentence fell within the applicable Guideline range. For both the original sentence and the reduced sentence, the district court must consider the same factors. *See* 18 U.S.C. § 3582(c)(2) (instructing court to consider § 3553(a) factors); *see also* U.S.S.G. § 1B1.10 cmt. 1(B)(i). Here, the district court originally concluded, based on these factors, that Petitioner should be sentenced at the low end of the Guidelines range. The court then concluded, based on the same factors, that the Petitioner deserved a sentence in the middle of the Guidelines range. The district court's failure to explain why it changed its view is contrary to "the basic principle of justice that like cases should be decided alike." *Martin*, 546 U.S. at 139.

A district court that does not grant a proportional sentence reduction also cannot rely on its explanation for how it weighed the § 3553(a) factors in defendant's original sentence. To the contrary, the disproportional sentence presumes that the court has *changed* how it weighed the relevant factors. Such a departure requires a new explanation by the court, where it is not otherwise apparent from the record. Without such an explanation, an appellate court has no means to determine if and how the district court considered the sentencing factors in selecting the modified sentence.

If appellate courts are to play a meaningful role in sentence-reduction proceedings, district courts must explain their reasoning. Otherwise, courts of appeal and this Court must either speculate as to why the district court imposed a particular sentence or simply

rubber stamp any decision the district court makes. Both options undermine the effectiveness of appellate review and thus the legitimacy of the judicial system.

B. Reasoned Decisions Provide Important Information to the Sentencing Commission.

Explanations for sentence-reduction decisions are also important because they provide valuable feedback to the Sentencing Commission, which in turn will lead to more informed and accurate Sentencing Guidelines.

The Sentencing Guidelines play an important role in the criminal justice system. This Court has preserved a "key role" for the Guidelines by requiring district courts to treat them as the "starting point and the initial benchmark" of their sentencing decisions. *Kimbrough v. United States*, 552 U.S. 85, 108 (2007) (quoting *Gall*, 552 U.S. at 49). In order to ensure that the Sentencing Guidelines are fair and accurate, the Commission has an ongoing duty to review and revise the Guidelines. 28 U.S.C. § 994(o).

District court sentencing determinations are an integral part of this process. Indeed, "the very theory of the Guidelines system is that when courts, drawing upon experience and informed judgment in cases, decide to depart, they will explain their departures," the "courts of appeals, and the Sentencing Commission, will examine, and learn from, those reasons," and "the resulting knowledge will help the Commission to change, to refine, and to improve, the Guidelines themselves." *United States v. Rivera*, 994 F.2d 942,

949-50 (1st Cir. 1993) (Breyer, C.J.); Stephen Breyer, *The Federal Sentencing Guidelines and the Key Compromises upon Which They Rest*, 17 Hofstra L. Rev. 1, 8 (1988) (guidelines system is an "evolutionary" one in which "the Commission issues Guidelines, gathers data from actual practice, analyzes the data, and revises the Guidelines over time").

When judges articulate reasons for sentences and sentence reductions, they provide "relevant information to both the court of appeals and ultimately the Sentencing Commission," which help the Guidelines "constructively evolve over time, as both Congress and the Commission foresaw." *Rita*, 551 U.S. at 358; *see also United States v. Booker*, 543 U.S. 220, 263 (2005) (Sentencing Commission modifies the Guidelines "in light of what it learns, thereby encouraging what it finds to be better sentencing practices" and "promot[ing] uniformity in the sentencing process").[29]

Reasoned explanations for sentencing decisions (including sentence reductions) are "a conduit by which particular insights and experiences of trial

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[29] *See also* Paul E. Shelton, *"Reasons? We Don't Need No Stinkin' Reasons": Why United States District Courts Should Be Required to Explain 17 U.S.C. § 3582(c)(2) Resentencing Decisions*, 87 Tul. L. Rev. 1311, 1325 (2013) ("Whether a district court sentences a defendant within the applicable guideline range or departs from it, the court's explanation for doing so is essential to the Sentencing Commission's determination as to whether an amendment to the Sentencing Guidelines is warranted.").

court judges can pass to sentencing policy makers."[30] The Sentencing Commission has recognized the benefits of this "robust feedback loop" between the judiciary and the Commission for the purpose of improving the Guidelines.[31]

Significant changes to the Sentencing Guidelines have grown "organically from seeds sown by the district courts."[32] District courts have expressed policy disagreements and advocated for sentencing reform for Guidelines related to the 100:1 ratio for crack/powder cocaine, methamphetamine, MDMA (ecstasy), and illegal reentry.[33]

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[30] Michael M. O'Hear, *Appellate Review of Sentence Explanations: Learning from the Wisconsin and Federal Experiences*, 93 Marquette L. Rev 751, 760 (2009).

[31] *Id.* at 761 (citing U.S. Sentencing Guidelines Manual Section 1A1.1 cmt ed. note (2006) ("By monitoring when courts depart from the guidelines and by analyzing their stated reasons for doing so, the Commission, over time, will be able to create more accurate guidelines . . . .").

[32] Scott Michelman & Jay Rorty, *Doing Kimbrough Justice: Implementing Policy Disagreements with the Federal Sentencing Guidelines*, 45 Suffolk U. L. Rev. 1083, 1109 (2012).

[33] *See e.g.*, *United States v. Gully*, 619 F. Supp. 2d 633, 638-45 (N.D. Iowa 2009) (disagreeing with 100:1 ratio in crack-cocaine Guidelines on policy grounds because lack of empirical support and disparate impact on black offenders); *United States v. Hayes*, 948 F. Supp. 2d 1009, 1014 (N.D. Iowa 2013) (joining other courts to express policy disagreement with methamphetamine Guidelines as not based on empirical evidence and excessive); *United States v. McCarthy*, 2011 WL 1991146 at *3-4 (S.D.N.Y. May 19, 2011) (criticizing guidelines' recommended punishment for MDMA (ecstasy)); *United States v. Amezcua-Vasquez*, 567 F.3d 1050 (9th Cir. 2009) (reversing as substantively unreasonable a

The robust feedback loop between the judiciary and the Commission only works, however, if district courts issue reasoned explanations for their sentencing decisions. The Commission must be able to review the decisions for explicit policy disagreement or explanations of how individual factors resulted in the assigned sentence.

Reasoned decisions in the context of sentence-reduction proceedings are particularly useful for the Sentencing Commission. These proceedings provide an opportunity for the district courts to give direct feedback to the Commission on the efficacy of revised Guidelines. Because the Guidelines are intended to continuously evolve over time, the Commission may revise a Guideline multiple times to improve its accuracy. District courts' reasoned opinions in this context can inform the Commission whether the amended Guidelines were in fact an improvement, or if additional modifications are needed.

By issuing reasoned decisions in applying revised Sentencing Guidelines, district courts provide valuable feedback that the Commission can use to continue to improve the Sentencing Guidelines. Particularly where a district court departs from an amendment's expected reduction, an explanation of why it did so is important for the Commission, as well as for the criminal defendant and the appellate court. This transparent dialogue between the courts and the

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within-guideline sentence in an illegal reentry case where the 16-level enhancement under § 2L1.2(b)(1)(A) overstated the seriousness of the defendant's offense and failed to avoid unwarranted disparity).

Commission gives substance to an evolutionary process that enhances public trust in the criminal justice system.

C. Reasoned Decisions Promote Transparency, Fairness, and Public Trust in the Criminal Justice System.

This Court has acknowledged that "[c]onfidence in a judge's use of reason underlies the public's trust in the judicial institution" and that a "public statement of those reasons helps provide the public with the assurance that creates that trust." *Rita*, 551 U.S. at 356. Explaining the reasons that a particular sentence was selected remains "sound judicial practice," *id.*, in the context of sentence-reduction proceedings. Requiring reasoned explanations for sentence reductions—especially for disproportional reductions like in this case—benefits the criminal justice system by promoting transparency, fairness, and uniformity in sentencing.

A district court's failure to explain its sentencing decision "affects the fairness, integrity, and public reputation of judicial proceedings." *United States v. Lewis*, 424 F.3d 239, 247 (2d Cir. 2005). Without a reasoned explanation, criminal defendants and the general public may be concerned that such sentencing decisions are unreliable, biased, arbitrary, "or that irrelevant factors, such as race or ethnicity, significantly affect sentences."[34] When a court provides a reasoned explanation—with reference to the

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[34] U.S. Sentencing Comm'n, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice*

objective principles that Congress has explicitly required it to consider—actual and perceived bias can be eliminated.[35] Explanations therefore promote confidence in the criminal justice system because "both the parties and the public can understand why a defendant received a particular sentence."[36]

Social psychology research confirms that "when the people affected by a decisionmaking process perceive the process to be just, they are much more likely to accept the outcomes of the process, even when the outcomes are adverse."[37] According to this research, when a court considers a defendant's arguments and explains its decision, a defendant is more likely to accept the outcome, perceive the process to be legitimate, and have a greater "sense of obligation to obey the law in the future."[38] These findings provide

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System is Achieving the Goals of Sentencing Reform, 137 (Nov. 2004), *available at* https://goo.gl/pakchi.

[35] Jelani Jefferson Exum, *Why March to a Uniform Beat - Adding Honesty and Proportionality to the Tune of Federal Sentencing*, 15 Tex. J. on C.L. & C.R. 141, 169 (2010); O'Hear, *Appellate Review of Sentence Explanations*, *supra* note 31, at 755.

[36] Jennifer Niles Coffin, *Where Procedure Meets Substance: Making the Most of the Need for Adequate Explanation* 9 (July 2010, revised and updated through Aug. 15, 2016), https://goo.gl/zNhNnw; *see also United States v. Grier*, 475 F.3d 556, 572 (3d Cir. 2007) (a reasoned explanation "promotes respect for the adjudicative process, by demonstrating the serious reflection and deliberation that underlies each criminal sentence").

[37] Michael M. O'Hear, *Explaining Sentences*, 36 Fla. St. U. L. Rev. 459, 478 (2009).

[38] *Id.*

support for this Court's observation that treating a defendant with "basic fairness" will "enhance the chance of rehabilitation by avoiding reactions to arbitrariness." *Morrissey v. Brewer*, 408 U.S. 471, 484 (1972).

Psychological research also suggests that requiring courts to explain their reasoning results in better decision-making. Requiring a person to justify her decision tends to mitigate biases and lead to better consideration of all the available information.[39] The accountability that comes with providing a public explanation can further reduce biases associated with a lack of critical self-attention.[40] As a result, requiring reasoned decisions can lead to more accurate and fair sentence-reduction decisions for defendants.

A study of resentencing proceedings confirms this point. The study looked at instances in which a sentence was vacated on appeal and remanded for the district court to provide an explanation for the decision.[41] Even though the court was free to impose the same sentence on remand, the need to provide an explanation resulted in significance changes to the length of the sentences. The courts changed the sentence in the majority of cases, and for within-guideline

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[39] O'Hear, *Appellate Review of Sentence Explanations*, *supra* note 30, at 759.

[40] Jennifer S. Lerner & Philip E. Tetlock, *Accounting for the Effects of Accountability*, 125 Psychol. Bull. 255, 265 (1999).

[41] *See* Coffin, *supra* note 36.

sentences, 58% of sentences were less severe on remand.[42]

Finally, providing an explanation is particularly important for sentence-reduction decisions because defendants have fewer rights in these proceedings. Defendants have no right to be present during the proceeding. Fed. R. Crim. P. 43(b)(4). And most courts have held that defendants in sentence-reduction proceedings do not have the right to counsel or to an evidentiary hearing. *See, e.g.*, *United States v. Legree*, 205 F.3d 724, 730 (4th Cir. 2000); *United States v. Gregory*, 350 F. App'x 536, 539 (2d Cir. 2009). In these circumstances, unless the court issues a reasoned decision, a prisoner will not know why he did not receive the reduction he sought or expected.

In sum, public trust in our criminal justice system depends on transparent decision-making. This transparency ensures that each defendant receives fair treatment, and that his sentence is based on application of the correct legal standards, not the product of bias. To achieve these objectives, courts must explain why a defendant is given a particular sentence. The benefits of reasoned explanations apply just as strongly to resentencing and sentence-reduction decisions as to the original sentencing decision. The district court in this case should have explained how it chose the sentence it gave Petitioner and why it departed from giving the expected two-level reduction under Amendment 782.

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[42] *Id.* at 18.

CONCLUSION

For the foregoing reasons, as well as those reasons set forth in Petitioner's brief, the decision of the court of appeals should be reversed.

Respectfully submitted,

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No. 17-5639

In the Supreme Court of the United States

ADAUCTO CHAVEZ-MEZA, PETITIONER,

v.

UNITED STATES OF AMERICA, RESPONDENT.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRIEF OF NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AND NATIONAL ASSOCIATION OF FEDERAL DEFENDERS AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE[1]

Amici curiae are the National Association of Criminal Defense Lawyers (NACDL) and the National Association of Federal Defenders (NAFD).

[1] Pursuant to Rule 37.6, amici affirm that no counsel for a party authored this brief in whole or in part and that no person other than amici or their counsel has made any monetary contributions intended to fund the preparation or submission of this brief. Petitioner's consent to the filing of amicus briefs is filed with the Clerk. Amici received respondent's consent to file this brief by letter and have filed that letter with the Clerk.

NACDL is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958. It has a membership of many thousands of direct members and up to 40,000 affiliated members. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. NACDL is dedicated to advancing the proper, efficient, and just administration of justice.

NAFD, formed in 1995, is a nationwide, nonprofit, volunteer organization whose membership is comprised of attorneys who work for federal public and community defender organizations authorized under the Criminal Justice Act. Each year, federal defenders represent tens of thousands of individuals in federal court, including in sentence-modification proceedings under 18 U.S.C. § 3582(c)(2). NAFD therefore has both particular expertise and interest in the subject matter of this litigation.

Amici file numerous amicus briefs each year in this Court and other federal and state courts, seeking to provide assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole. Amici filed briefs in many of this Court's sentencing cases following the Court's seminal decision in *United States* v. *Booker*, 543 U.S. 220 (2005). As particularly relevant here, amici have filed briefs in this Court in cases interpreting and applying 18 U.S.C. § 3582(*c*)(2).

Amici promote policies that assure reviewing courts and the public that sentence modification is a reasoned process. Amici appear in support of petitioner to explain that most district courts have applied Section 3582(c)(2) consistently with its intended purpose of remedying in-

justice across a broad category of offenders. But, in a minority of cases, including this one, courts have denied offenders the full benefit of a Guidelines amendment without explanation. That arbitrary treatment of offenders undermines the purposes of Section 3582(c)(2) and the sentencing process more generally. Such unexplained denials also give short shrift to the central role of the Commission and the revised Guidelines range in sentence-modification proceedings.

SUMMARY OF ARGUMENT

The requirement to provide a minimal statement of reasons in sentence-modification proceedings furthers the purposes of 18 U.S.C. § 3582(c)(2) and the sentencing regime, protects the central role of the Sentencing Commission in such proceedings, and enables meaningful appellate review.

I. Section 3582(c)(2) enables an offender to reduce his or her sentence when the Sentencing Commission has decided that the Guidelines range under which the offender was sentenced is unjust. As a plurality of this Court explained, Congress enacted Section 3582(c)(2) to provide "a systemic solution . . . to remedy systemic injustice." *Freeman* v. *United States*, 564 U.S. 522, 534 (2011) (plurality opinion). District courts apply Section 3582(c)(2) in this systemic fashion in most cases. It appears that district courts typically grant proportional sentence reductions, giving offenders the full benefit of the reduction deemed just by the Commission. Most denials of sentence reductions are for lack of eligibility, not discretionary reasons, and most district courts explain their decisions to deny reductions.

Nevertheless, there are cases, such as this one, in which courts deny proportional reductions, or any reduc-

tion, without providing reasons. Such denials create the appearance of arbitrary treatment, defeating Congress's intention to provide a systemic solution to injustice. Unexplained denials impede appellate review and violate the central goals of the Sentencing Reform Act, including "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6).

II. A statement of reasons for the denial of a proportional reduction is also required in light of the central role of the revised Guidelines range in sentence-modification proceedings. The Guidelines reflect the Commission's considered judgment about how much punishment is necessary to meet Congress's salutary sentencing goals. When the Commission amends a Guidelines range, it has determined that sentences imposed under the original Guidelines are greater than necessary to satisfy those goals. The revised range anchors the district court's exercise of discretion when it confronts a sentence-reduction motion under Section 3582(c)(2). When a district court imposes a proportional sentence reduction, the reviewing court may rest assured that the court based the sentence on its original consideration of the factors set forth in 18 U.S.C. § 3553(a), as applied to the revised Guidelines range promulgated by the Commission. By contrast, when a district court imposes a disproportional sentence reduction—or no reduction at all—that assumption does not hold. As Section 3582(c)(2) contemplates, there may be legitimate grounds for denying offenders the benefit of a full sentence reduction. But, without a statement of reasons, an appellate court cannot know if the denial was based on such legitimate grounds. A minimal statement of reasons is necessary to facilitate appellate review.

The amount of explanation required will necessarily vary from case to case. On a spartan record, like the one in this case, however, the district court's failure to provide any reason inappropriately precludes meaningful appellate review.

ARGUMENT

I. THE DENIAL OF A PROPORTIONAL SENTENCE REDUCTION WITHOUT EXPLANATION UNDERMINES THE PURPOSES OF SECTION 3582(C)(2) AND THE SENTENCING REGIME

Congress called for the creation of the Sentencing Guidelines "to inform judicial discretion in order to reduce unwarranted disparities in federal sentencing." *Freeman* v. *United States*, 564 U.S. 522, 525 (2011) (plurality opinion). Congress recognized, however, that there may be situations in which "the Guidelines become a cause of inequality, not a bulwark against it." *Ibid.* Congress thus established a sentence-modification procedure, embodied in Section 3582(c)(2), "to give prisoners the benefit of later enacted adjustments to the judgments reflected in the Guidelines." *Dillon* v. *United States*, 560 U.S. 817, 828 (2010). In most cases, district courts heed Congress's wishes and proportionally adjust eligible sentences to the new Guidelines range. But when courts deny proportional reductions without explanation, they create an appearance of arbitrariness that undermines the purposes of Section 3582(c)(2) and the sentencing regime.

A. Section 3582(c)(2) Is Intended To Remedy "Systemic Injustice" And To Provide "Systemic Relief"

The Sentencing Commission's expertise occasionally leads it to conclude that promulgated Guidelines are "too

severe, out of step with the seriousness of the crime and the sentencing ranges of analogous offenses, and inconsistent with the [Sentencing Reform] Act's purposes." *Freeman*, 564 U.S. at 533. The Act contemplates that eventuality and charges the Commission with revising the flawed Guidelines ranges. 28 U.S.C. § 994(*o*). But Congress did not stop there—Section 994(u) allows the Commission to make its revisions retroactive so that incarcerated defendants need not "linger in prison" under sentences now understood to be excessive and unjust. *Freeman*, 564 U.S. at 526.

Section 3582(c)(2) establishes the mechanism by which district courts may reduce sentences that were based on retroactively reduced Guidelines ranges. Section 3582(c)(2) creates "a systemic solution . . . to remedy systemic injustice." *Freeman*, 564 U.S. at 534. Consistent with the systemic nature of the Section 3582(c)(2) remedy, sentence-modification proceedings are not "plenary resentencing proceeding[s]," *Dillon*, 560 U.S. at 826, and courts may modify, or decline to modify, sentences without holding a hearing, *id.* at 826–28. Section 3582(c)(2) provides for only "a limited adjustment to an otherwise final sentence." *Id.* at 826; *see also id.* at 848 (Stevens, J., dissenting) (describing sentence reductions as "rote . . . reductions").

B. In Practice, Courts Typically Grant Proportional Reductions And Provide Reasons When They Do Not

Section 3582(c)(2) ordinarily functions just as Congress envisioned it would. *First*, it appears that, when district courts grant sentence reductions, they typically grant proportional ones. *Second*, courts usually deny sentence reductions for lack of eligibility, not for discretionary reasons, and courts explain most denials.

1. *Courts Typically Grant Proportional Reductions*

a. The Sentencing Commission's data suggest that proportional reductions are the norm. Over the past ten years, the Commission has made three Guidelines amendments retroactive: Amendments 706 (as amended by Amendments 711 and 715),[2] 750,[3] and 782.[4]

The publicly available data do not allow for a case-by-case analysis of granted sentence reductions. However, the Commission's reports analyzing the implementation of Amendments 706 and 750 describe the distribution of within-Guidelines sentences under offenders' original sentences and their modified sentences. *See* 706 Report table 7; 750 Report table 7. The reports contain rough approximations of where reduced sentences fall within the Guidelines. The reports divide sentence ranges into

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[2] *See* United States Sentencing Commission, *Preliminary Crack Cocaine Retroactivity Data Report* (June 2011) ("706 Report"). Amendment 706 modified the base offense levels for crack cocaine offenses to include the statutory minimum penalties and adjusted downward by two levels crack cocaine offenses for quantities above and below the mandatory minimum threshold quantities. *See id.* The three reports discussed in this part of the brief are accessible at https://www.ussc.gov/research/data-reports/retroactivity-analyses-and-data-reports.

[3] *See* United States Sentencing Commission, *Final Crack Retroactivity Data Report Fair Sentencing Act* (December 2014) ("750 Report"). Amendment 750 increased the quantities of crack cocaine that trigger the five- and ten-year statutory minimum penalties and eliminated the five-year mandatory minimum for simple possession of crack cocaine. *See id.*

[4] *See* United States Sentencing Commission, *2014 Drug Guidelines Amendment Retroactivity Data Report* (January 2018) ("782 Report").

five segments: (1) the Guidelines minimum, (2) the lower half of the range, (3) the midpoint of the range, (4) the upper half of the range, and (5) the Guidelines maximum. The reports then indicate the percentages of original sentences and of subsequently reduced sentences that fall within each segment.

The data show that the proportions of sentences in each segment of the Guidelines range remain roughly consistent after sentence-modification proceedings. The following chart combines the percentages across both the 706 and 750 Reports.

Guideline minimum	63.7%	64.3%
Lower half of range	17.7%	14.2%
Midpoint of range	5.0%	7.3%
Upper half of range	7.1%	7.2%
Guideline maximum	6.5%	7.0%

See 706 Report table 7; 750 Report table 7. Again, the data do not permit comparison of sentences in individual cases, but the data strongly suggest that courts typically issue proportional reductions.

Qualitative evidence confirms this conclusion. According to a study of Amendment 782's application in six judicial districts that were among those receiving the most Amendment 782 filings, "full sentence reductions for eligible individuals were the norm, and objections to a full reduction were limited to exceptional circumstances." Caryn Devins, *Lessons Learned from Retroactive Resentencing After* Johnson *and Amendment 782*, 10 Fed. Cts. L. Rev. 37, 70 (Winter 2018); *see also id.* at 82 ("In practice, many judges reduced the sentences of eligible individuals by the full two levels unless a reduction would not be appropriate based on the factors listed in 18 U.S.C. § 3553(a) and U.S.S.G. § 1B1.10."). The study also showed that these courts implemented streamlined (and sometimes expedited) administrative processes for dealing with sentence-reduction motions. *Id.* at 70.

Because it appears that sentence-reduction motions seldom result in disproportional reductions, it should be the infrequent case in which a court must do anything except translate the original sentence to the new range.

b. The mechanical way in which district courts seemingly apply retroactive Guidelines amendments is consistent with the Commission's own assumptions. Amendment 782, the amendment at issue in this case, is illustrative. As required by law, *see* 28 U.S.C. § 994(u); United States Sentencing Commission, *Rules of Practice and Procedure*, Rule 4.1A (2016), the Commission analyzed the effect that making Amendment 782 retroactive would have on currently incarcerated defendants, United States Sentencing Commission, Memorandum from Office of Research and Data and Office of General Counsel

to Chair Saris (May 27, 2014) (Amendment 782 Retroactivity Impact Analysis).[5] The Commission's retroactivity impact analysis shows that the Commission expected that eligible offenders would receive the full benefit of Amendment 782's Guidelines reduction—*i.e.*, proportional reductions of their sentences.

In conducting the retroactivity impact analysis, the Commission determined the number of offenders eligible for an Amendment 782 reduction and then "hypothetically 'resentenced' [them] with [a] computer program as if the amendment had been in effect" when those offenders were originally sentenced. Amendment 782 Retroactivity Impact Analysis 16. The Commission's model "resentenced" offenders "to the same relative position within (or outside) the original Guideline range," *id.* table 8—which is to say, the Commission assumed that the average offender would receive a full two-level (*i.e.*, proportional) sentence reduction. On that basis, the Commission projected that the 46,376 potentially eligible offenders would enjoy an average sentence reduction of 25 months (or 18.8%), saving the Bureau of Prisons 79,740 bed years.[6] United States Sentencing Commission, Memorandum from Office of Research and Data to Chair Saris 2 (July 25, 2014) (Amendment 782 Key Data Summary).[7]

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[5] https://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20140527_Drug_Retro_Analysis.pdf.

[6] A "bed year" is the cost to the Bureau of Prisons of incarcerating one inmate for one year.

[7] https://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20140725

Congress created the Commission to reduce unwarranted disparities in federal sentencing by crafting Guidelines that "reflect a rough approximation of sentences that might achieve § 3553(a)'s objectives." *Rita* v. *United States*, 551 U.S. 338, 350 (2007). By making Amendment 782 retroactive, the Commission reasoned that for offenders like petitioner, the Guidelines ranges under which they were sentenced are greater than necessary to achieve the objectives of Section 3553(a). The Commission's revised Guidelines ranges reflect its latest reasoned judgment about the appropriate term of imprisonment, and the Commission apparently expected that district courts would heed that judgment in mine-run cases. The Commission's data suggest that courts are doing just that.

2. *Denials Typically Are For Nondiscretionary Reasons And Are Explained*

The Commission also compiles data related to outright denials of sentence-reduction motions. In most cases, sentence-reduction motions are denied because the offender is ineligible for reduction—not for discretionary reasons. Even then, some explanation usually accompanies the denial. Accordingly, requiring district courts to provide an explanation when denying sentence

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-Drug-Retro-Analysis.pdf. The Commission delayed implementation of Amendment 782 by a year because it was concerned about lacking adequate reentry resources to accommodate the many offenders who would be released if the Amendment was applied proportionally. *See* United States Sentencing Commission, Amendment to the Sentencing Guidelines 1–2 (July 18, 2014), https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20140718_RF_Amendment782.pdf.

reductions will not alter the practice in most district courts.

The following chart again compiles data from the Commission's reports analyzing sentence-reduction motions under Amendments 706, 750, and 782.[8]

Amendment 706	77%	5%[9]
Amendment 750	72%	12%[10]
Amendment 782	66%	13%

As these data reveal, most sentence-reduction denials occur because the offender is ineligible for a reduction. In many districts, the Commission or the U.S. Probation Office makes at least preliminary eligibility determinations. *See* Devins, *supra*, at 70. Accordingly, many denials will only require the district court to incorporate the existing eligibility reasoning.

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[8] *See* 706 Report, table 9; 750 Report, table 9; 782 Report, table 8.

[9] "Of the 444 cases in which the court did not give a reason for the denial, 289 were previously identified as ineligible by the Commission for sentence reduction." 706 Report, table 9 n.1.

[10] "Of the 726 cases in which the court did not give a reason for the denial, 595 were previously identified as ineligible by the Commission for sentence reduction." 750 Report, table 9 n.1.

The data further demonstrate the rarity with which district courts fail to provide explanations for reduction denials. Across all cases, district courts explained 90% of all denials of sentence-reduction motions. In other words, it appears that courts are already doing what petitioner contends is required, and there is no evidence that courts are straining under the burden of providing reasons when denying sentence reductions.

C. Denials Of Proportional Reductions Without Explanation Create An Appearance Of Arbitrariness

Although courts typically grant proportional reductions and explain their decisions to deny reductions, as this case illustrates, that practice is not uniform. The unexplained, differential treatment of eligible offenders creates an appearance of arbitrariness and denies offenders the "systemic solution" enacted by Congress. *Freeman*, 564 U.S. at 534.

Imagine two offenders convicted of the same drug trafficking crime. Both are model prisoners serving identical original sentences, and both qualify for a sentence reduction under Amendment 782. Upon moving for relief under Section 3582(c)(2), the offenders receive only a boilerplate form. One sentence is reduced proportionally, and the other is not reduced at all. The first offender properly benefitted from the Commission's enlightened view of just punishment for the crime, whereas the second must, in effect, serve a sentence that is tantamount to an upward variance from the revised Guidelines. If the district court need not explain its decision to deny a reduction, the appellate court cannot meaningfully review the decision to determine whether it was an abuse of discretion.

Section 3582(c)(2) instructs courts to consider the Section 3553(a) factors in determining whether, and to what extent, to grant a sentence reduction. *See Dillon*, 560 U.S. at 827. Without any statement of reasons, it would be impossible for the reviewing court to assess, in particular, whether the sentence was "greater than necessary" "to provide just punishment," 18 U.S.C. § 3553(a)(2), or whether it resulted in "unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct," 18 U.S.C. § 3553(a)(6). And seemingly arbitrary decisions—especially those involving restrictions on liberty—erode confidence in the justice system and the rule of law.

Sentence-modification proceedings under Section 3582(c)(2) are particularly susceptible to perceived arbitrariness. Although courts must weigh the Section 3553(a) factors as in original sentencings, sentence-modification proceedings are not plenary resentencing proceedings. Offenders thus do not benefit from the full panoply of procedural protections that apply in original sentencings. *Dillon*, 560 U.S. at 826–28. Defendants need not be present. *See* Fed. R. Crim. P. 43(b)(4). The proceedings are not adversarial, and many districts do not appoint counsel. *See* Devins, *supra*, at 69–70. The proceedings can originate, moreover, on the court's own motion. *See* 18 U.S.C. § 3582(c)(2).

The government's position—and the logical conclusion of the Tenth Circuit's decision—is that the unexplained differential treatment of offenders eligible for sentence reductions is perfectly acceptable. *See* Br. in Opp. 15. For starters, it is difficult to reconcile that position with this Court's admonition that a court should explain its decision to depart from the applicable Guide-

lines range. *See Gall* v. *United States*, 552 U.S. 38, 50 (2007). After all, a decision to deny a sentence reduction to an eligible offender is analogous to a "variance" from the retroactively applicable range. *Ibid.* A reviewing court cannot determine whether a district court abused its discretion in declining to apply the new Guidelines range if it does not know why the district court did so.

Such an outcome, moreover, is antithetical to Congress's goal in enacting Section 3582(c)(2): to provide "a systemic solution . . . to remedy systemic injustice." *Freeman*, 564 U.S. at 534. Unexplained decisions to deny offenders the benefit of Section 3582(c)(2) creates the appearance that courts have drawn "arbitrary distinctions between similar defendants." *Ibid.*

That outcome likewise undermines the central missions of federal sentencing law. It fails to ensure that sentences are "sufficient, but not greater than necessary." *See* 18 U.S.C. § 3553(a). It fails to reduce unwarranted disparities in sentencing. *See* 18 U.S.C. § 3553(a)(6). And it fails to heed Section 3553(a)'s command to impose sentences that promote respect for the rule of law. See 18 U.S.C. § 3553(a)(2)(A). The losing offender will surely be unconvinced "that justice has been done in his case [and] that society has dealt with him fairly." *Rita*, 551 U.S. at 367 (Stevens, J., concurring).

The solution is to require a basic explanation of the reasons why a district court has denied an offender the full benefit of a revised Guidelines range.

II. THE ANCHORING WEIGHT OF THE GUIDELINES REQUIRES DISTRICT COURTS TO EXPLAIN DECISIONS TO DENY PROPORTIONAL REDUCTIONS

Time and again this Court has emphasized the centrality of the Sentencing Guidelines in the federal criminal process. The Sentencing Commission draws on its deep well of national experience to formulate and refine the Guidelines. *See Kimbrough* v. *United States*, 552 U.S. 85, 108–09 (2007). "[G]uided by a professional staff with appropriate expertise," *id.* at 109, the Commission collects and analyzes empirical sentencing data from all 94 federal judicial districts to fulfill its charge under the Sentencing Reform Act: "to create a comprehensive sentencing scheme in which those who commit crimes of similar severity under similar conditions receive similar sentences," *Freeman*, 564 U.S. at 533.

Guidelines amendments, too, are products of the Commission's reasoned judgment. Such is the case with Amendment 782. The Commission determined—after receiving comment from the Attorney General, the Director of the Federal Bureau of Prisons, the federal judiciary, members of Congress, academics, law enforcement groups, and the public—that base offense levels for drug trafficking offenses were too high. Specifically, the Commission concluded that the applicable Guidelines ranges were greater than necessary to induce defendants to plead guilty and resulted in significant overcapacity of (and correspondingly high costs to) the Federal Bureau of Prisons. U.S.S.G. app. C, supp. amend. 782. To remedy those problems, in 2014 the Commission lowered the base offense levels for drug trafficking offenses and, in Amendment 788, made Amendment 782 retroactive.

Allowing district courts to sidestep the minimal demand of articulating a basis for denying a proportional sentence reduction precludes meaningful appellate review while at the same time disrupting Congress's carefully balanced distribution of sentencing judgment. District courts will be able to ignore the Commission's judgment as to the quantum of just punishment and Congress's decision "to give prisoners the benefit of later enacted adjustments to the judgments reflected in the Guidelines." *Dillon*, 560 U.S. at 828. And reviewing courts will be cut out of the process entirely, left only to review checkmarks on a boilerplate form.

A. The Guidelines Range Anchors The Court's Weighing Of The Section 3553(a) Factors At Original Sentencing

The Guidelines enter the equation long before conviction by informing prosecutorial decisions and plea bargaining. *See Molina-Martinez* v. *United States*, 136 S. Ct. 1338, 1342 (2016); *see also Freeman*, 564 U.S. at 538 (Sotomayor, J., concurring). When the time comes to impose a sentence, "[a]s a matter of administration and to secure nationwide consistency, the Guidelines [are] the starting point and the initial benchmark." *Gall*, 552 U.S. at 49. District courts "*must* begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process." *Id.* at 50 n.6 (emphasis added). The Guidelines are the "essential framework" for federal sentencing and "anchor . . . the district court's discretion." *Molina-Martinez*, 136 S. Ct. at 1345 (alteration in original) (quoting *Peugh* v. *United States*, 569 U.S. 530, 549 (2013)).

The anchoring effect the Guidelines have on sentencing courts is "real and pervasive." *Molina-Martinez*, 136 S. Ct. at 1346. "District courts, as a matter of course, use

the Guidelines range to instruct them regarding the appropriate balance of the relevant federal sentencing factors." *Id.* at 1347. "[C]onsiderable empirical evidence," *Peugh*, 569 U.S. at 543, shows that the Guidelines do what they were designed to do: "serve as the starting point for the district court's decision and anchor the court's discretion in selecting an appropriate sentence," *Molina-Martinez*, 136 S. Ct. at 1349.

B. A Revised Guidelines Range Anchors The Court's Weighing Of The Section 3553(a) Factors In Deciding A Sentence-Reduction Motion

The Guidelines play an equally crucial role in sentence-modification proceedings under Section 3582(c)(2). Congress gave the Commission a "substantial role . . . with respect to sentence-modification proceedings." *Dillon*, 560 U.S. at 826. A district court's resolution of a motion under Section 3582(c)(2) for sentence reduction is no ordinary exercise of discretion. Section 3582(c)(2) "circumscribe[s]" the court's discretion. *Dillon*, 560 U.S. at 829. "A court's power under § 3582(c)(2) . . . depends in the first instance on the Commission's decision not just to amend the Guidelines but to make the amendment retroactive" and is "constrained by the Commission's statements dictating by what amount the sentence of a prisoner serving a term of imprisonment affected by the amendment may be reduced." *Id.* at 826 (internal quotation marks omitted). The court must further consider the factors set forth in Section 3553(a) and may grant a reduction only "if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(2).

The court's discretionary decision takes place against the backdrop of the Sentencing Commission's reasoned judgment that the previously applicable Guidelines

range was too severe. In sentence-modification proceedings the revised Guidelines range serves as the new "anchor[ ]." *Molina-Martinez*, 136 S. Ct. at 1345. When a district judge contemplates whether to grant the reduction deemed appropriate by the Sentencing Commission, the revised Guidelines are the "framework or starting point—[the] basis, in the commonsense meaning of the term—for the judge's exercise of discretion." *Freeman*, 564 U.S. at 529 (plurality opinion). Under the Commission's applicable policy statement, U.S.S.G. § 1B1.10, every other Guidelines application decision is held constant. *Dillon*, 560 U.S. at 827, 829; *see Freeman*, 564 U.S. at 530 (stating that U.S.S.G. § 1B1.10 "seeks to isolate whatever marginal effect the since-rejected Guideline had on the defendant's sentence"). The judge then weighs the Section 3553(a) factors and the other factors identified in Section 1B1.10 and determines the extent of the reduction. *Dillon*, 560 U.S. at 827.

If the judge grants a proportional reduction, an appellate court's job is simple. The appellate court can readily infer how the district court balanced the Section 3553(a) factors by looking to the original sentencing record. In other words, in the case of a proportional reduction, an appellate court can appropriately assume that the district court's exercise of discretion was anchored by the revised Guidelines range and that the Section 3553(a) balancing deposited the offender in the same (relative) place in that range.

Consider, for example, a situation in which the district court in this case had reduced petitioner's sentence to the bottom of the new Guidelines range, 108 months. Because the district court had previously explained its decision to sentence petitioner to the bottom of the origi-

nal Guidelines range, *see* Pet. Br. 4, an appellate court could appropriately assume that the district court's balancing of the Section 3553(a) factors in the sentence-modification proceeding yielded a sentence at the bottom of the new Guidelines range, just as the Sentencing Commission had expected when it assessed the effect of making Amendment 782 retroactive. *See* pp. 9–10, *supra*.

That same assumption does not hold when a district court issues a disproportional sentence reduction. A disproportional reduction may reflect the court's assessment that the Section 3553(a) factors (or the related factors identified in U.S.S.G. § 1B1.10) warrant a different relative sentence within the new Guidelines range. Because the revised Guidelines range anchors the judge's discretion and the Commission's policy statement does not permit any other changes to the Guidelines application, *see* p. 19, *supra*, one conclusion is that the Section 3553(a) factors caused the court to arrive at a different place in the Guidelines range than it did originally. But, absent some explanation from the district judge, an appellate court has no way to know why.

Another explanation for a disproportional sentence reduction is that the court simply erred. To date, district courts have processed some 48,000 Amendment 782 applications. 782 Report table 1. In 2015, when petitioner moved for his sentence reduction, there were 21,576 retroactive-amendment sentence modifications nationwide. United States Sentencing Commission, *Annual Report and Sourcebook of Federal Sentencing Statistics* (2015),

table 62.[11] The Tenth Circuit alone was home to 1,269 such motions that year. *Id.* Given the sheer volume of such motions, it would hardly be surprising if mistakes occurred—particularly because some courts decide whether to grant sentence reductions on their own motions. *See* Devins, *supra*, at 70 ("In many districts, the U.S. Probation Office made an initial determination as to which individuals were eligible and the court decided the sentence reduction motions, often on its own motion.").

To be sure, there may well be legitimate reasons for a district court to deny a proportional reduction. Perhaps a particular offender poses an especially severe risk to public safety. *See* U.S.S.G. § 1B1.10 cmt. 1(B)(ii) (directing the court to "consider the nature and seriousness of the danger to any person or the community that may be posed by a reduction in the defendant's term of imprisonment"). Perhaps the offender's record of misconduct in prison alters the balancing analysis. *See id.* cmt. 1(B)(iii) ("The court may consider post-sentencing conduct of the defendant that occurred after imposition of the term of imprisonment . . . ."). The court might have chosen the original sentence because it deemed the sentence appropriate in absolute terms. The court might even have a policy disagreement with the revised Guidelines range such that the court does not believe the new Guidelines adequately reflect the seriousness of the offense. *See Spears* v. *United States*, 555 U.S. 261, 265–66 (2009) (per curiam); *see also Kimbrough*, 552 U.S. at 109 (suggesting that "closer review may be in order when the

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[11] https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2015/Table62.pdf (2015).

sentencing judge varies from the Guidelines based solely on the judge's view that the Guidelines range fails properly to reflect § 3553(a) considerations even in a mine-run case" (internal quotation marks omitted)).

Whatever the reason, the basic point remains: without any explanation, an appellate court cannot know why a district court did what it did, much less determine whether the district court abused its discretion. Especially in cases like this one—where the record contained no disqualifying disciplinary infractions and the government did not contest the reduction, there is nothing for an appellate court to review if a district court does not provide a reason. And review is particularly warranted when an offender, like petitioner, originally received a sentence at the bottom of the then-applicable Guidelines range. Sentences at the bottom of a Guidelines range are "conspicuous" because they evidence a court's intention "to give the minimum recommended by the Guidelines." *Molina-Martinez*, 136 S. Ct. at 1347–48. The only way to enable meaningful appellate review is to require some explanation for the anomalous outcome.

Meaningful appellate review remains critical to a just, fair sentencing regime. Some motivations will fail the abuse-of-discretion standard on appeal: "After all, a district judge who gives harsh sentences to Yankees fans and lenient sentences to Red Sox fans would not be acting reasonably . . . ." *Rita*, 551 U.S. at 365 (Stevens, J., concurring); *see also Gall*, 552 U.S. at 68 (Alito, J., dissenting) ("A decision calling for the exercise of judicial discretion hardly means that it is unfettered by meaningful standards or shielded from thorough appellate review." (internal quotation marks omitted)). Other motivations are more pernicious and explicitly prohibited from a modifying court's calculus. *See* U.S.S.G. § 5H1.10

(forbidding use of race, sex, national origin, creed, religion, and socioeconomic status in the determination of a sentence). Without an explanation of a disproportional sentence reduction, an appellate court cannot know if the Section 3553(a) factors were properly considered (or were considered at all) or if impermissible factors infected the district court's decision.

In sum, if the Guidelines are to remain the "lodestar" for federal sentencing, *Molina-Martinez*, 136 S. Ct. at 1346, district courts must explain any deviation that results in a disproportional sentence reduction.

C. The Depth Of Reasoning Will Depend On The Circumstances, But No Reasoning Is Not Enough

The amount of reasoning sufficient to justify a disproportional reduction (or a denial of a reduction altogether) will necessarily vary from case to case. As the Court previously explained in the original-sentencing context, "[t]he appropriateness of brevity or length, conciseness or detail, when to write, what to say, depends upon circumstances." *Rita*, 551 U.S. at 356. It would be impossible to articulate a comprehensive test in this case that would account for the vast range of circumstances that present themselves in sentence-modification proceedings.

At a minimum, where a district court does not explain a disproportional reduction and the government did not advocate for one, an appellate court cannot meaningfully review the district court's decision. The district court provided no reason whatsoever for its decision in this case, and the record contained evidence of positive post-conviction conduct and one minor disciplinary infraction that did not render petitioner ineligible for the reduction. *See* Pet. Br. 4–5. Especially where the gov-

ernment stipulated to petitioner's eligibility and did not argue in favor of any particular sentence, it is impossible to know the reason why the district court decided not to grant a proportional sentence reduction or whether, perhaps, it simply made a mistake.

A ruling for petitioner will allow for meaningful appellate review without "transform[ing] the proceedings under § 3582(c)(2) into plenary resentencing proceedings." *Dillon*, 560 U.S. at 827. District courts face requirements at a sentencing or resentencing that do not apply at a sentence-modification proceeding. Congress requires a district court to "state in open court the reasons for its imposition of the particular sentence." 18 U.S.C. § 3553(c). When the "range exceeds 24 months," the sentence is not of the kind for which a range is established, or the sentence is outside the range, Congress requires additional specificity. 18 U.S.C. §§ 3553(c)(1)–(2). In addition, the defendant "must be present" for sentencing. Fed. R. Crim. P. 43(a)(3).

The procedural requirement to state reasons in open court in the presence of the defendant does not apply in sentence-modification proceedings. *Dillon*, 560 U.S. at 828. But, for all the reasons already set forth, that fact does not obviate the need for a district court to provide a minimal statement of reasons when it grants a disproportional sentence reduction or denies a reduction. To the contrary, the lack of procedural protections in sentence-modification proceedings only heightens the need for a statement of reasons. As this Court has explained, Section 3582(c)(2) provides for "only a limited *adjustment* to an otherwise final sentence and not a plenary resentencing proceeding." *Id.* at 826 (emphasis added). A proportional reduction reflects just such an "adjustment" and is appropriately conducted without the

offender's involvement. When a district court's renewed assessment of the Section 3553(a) factors leads it to impose a disproportional sentence reduction or to deny a sentence reduction, however, the offender's relative lack of involvement makes it all the more imperative that the court provide an explanation to enable correction of abuses of discretion and mistakes on appeal.

The Tenth Circuit grounded the decision below on the misguided premise that a court need not provide reasons for an original within-Guidelines sentence. *See* J.A. 55. That premise is incorrect. Even if a district court need not provide extensive reasons for a within-Guidelines sentence, it must provide some reasoning to facilitate appellate review. As the Court held in *Gall*, "courts of appeals must review all sentences—whether inside, just outside, or significantly outside the Guidelines range—under a deferential abuse-of-discretion standard." 552 U.S. at 41. Appellate courts must "ensure that the district court committed no significant procedural error, such as . . . failing to consider the § 3553(a) factors, . . . or failing to adequately explain the chosen sentence." *Id.* at 51. Even for a within-Guidelines original sentence, the appellate court should further "consider the substantive reasonableness of the sentence." *See ibid.* To facilitate this review, at original sentencing "[t]he sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decisionmaking authority." *Rita*, 551 U.S. at 356 (citing *United States* v. *Taylor*, 487 U.S. 326, 336–37 (1988)).

Again, when a court grants a proportional reduction, a reviewing court may assume that the court's articulation of reasons in the original sentencing proceeding

motivated it to select a sentence in the same relative position in the new Guidelines range. It is only where the district court denies an offender the reduction deemed appropriate by the Commission to remedy injustice that a reason must be provided. Any other conclusion would turn the "systemic solution" created by Congress, *Freeman*, 564 U.S. at 534, into an arbitrary procedure in which a minority of offenders are denied a just reduction without explanation.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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